



United Nations
Conference
on Trade and
Development

Distr.
GENERAL

TD/B/COM.2/EM/8
20 August 1997

Original: ENGLISH

TRADE AND DEVELOPMENT BOARD
Commission on Investment, Technology
and Related Financial Issues
Expert Meeting on Competition Law and Policy
Geneva, 24 November 1997
Item 2 of the provisional agenda

ADOPTION OF THE AGENDA AND ORGANIZATION OF WORK

Provisional agenda and annotations

I. PROVISIONAL AGENDA

1. Election of officers
2. Adoption of the agenda and organization of work
3. (i) Consultations on competition law and policy, including the Model Law and studies related to the provisions of the Set of Principles and Rules
- (ii) Work programme, including technical assistance, advisory and training programmes on competition law and policy
4. Adoption of the report of the Meeting

II. ANNOTATIONS TO THE PROVISIONAL AGENDA

Item 1. Election of officers

The meeting will elect a Chairman and a Vice-Chairman-cum-Rapporteur.

Item 2. Adoption of the agenda and organization of work

The provisional agenda is in section I above.

Organization of work

In line with paragraph 114 of "A Partnership for Growth and Development" (TD/377), the Expert Meeting on Competition Law and Policy will last three days. The first plenary meeting will open at 10 a.m. on Monday, 24 November 1997 and be devoted to procedural matters (items 1 and 2) and to introductory statements. The closing plenary meeting, on 26 November, will be devoted to the work programme (agenda item 3 (ii)) and to the adoption of the report (agenda item 4). 1/

This will leave the remaining meetings, from the afternoon of 24 November to the morning of 26 November inclusive, for consultations on competition law and policy, including studies related to the provisions of the Set of Principles and Rules (agenda item 3 (i)). If more time is needed, the adoption of the report could be postponed to late afternoon of 26 November, in order for an afternoon informal working session to take place.

Item 3 (i). Consultations on competition law and policy, including the Model Law and studies related to the provisions of the Set of Principles and Rules

In paragraph 2 (c) of the agreed recommendations adopted by the Expert Meeting on Competition Law and Policy on 15 November 1996 (TD/B/COM.2/EM/5), it was recommended to the Commission on Investment, Technology and Related Financial Issues, which subsequently endorsed the agreed recommendations (TD/B/COM.2/4, annex I), that the UNCTAD secretariat be requested to prepare a study for consideration by the next Meeting on "empirical evidence of the benefits (including the benefits for consumers) to be gained by developing and least developed countries and countries in transition from applying competition law and policy principles to economic development in order to attain greater efficiency in international trade and development", on the basis of comments made at that meeting, and comments to be received by 31 January 1997. Accordingly, the study prepared by the UNCTAD secretariat on this issue (TD/B/COM.2/EM/10) will be submitted for consideration by the Expert Meeting.

Further, under paragraph 2 (d) of the same agreed recommendations, the experts requested the secretariat to continue to publish as non-sessional documents:

- "(i) Further issues of the Handbook on Competition Legislation;
- (ii) A revised version of the Commentary to the Model Law, taking into account new legislative developments in the field of competition; and
- (iii) An updated version of the Directory of Competition Authorities."

An updated version of the Directory was published on 14 May 1997 (TD/B/COM.2/EM/7). A further issue of the Handbook containing the competition laws and appropriate commentaries of countries will be published as document TD/B/COM.2/EM/11 and a revised version of the Model Law will be published as document TD/B/COM.2/EM/12. 2/

Finally, under this item of the agenda, as requested by the Expert Meeting in November 1996, specific consultations are to be held on three subjects, as follows:

- "(a) Non-price vertical restraints (selective distribution, exclusive dealing and franchising);
- (b) Ways and means of promoting a competition culture and making transparent the benefits to be derived from competition policy;
- (c) International aspects of competition and the problems for competition law enforcement, including international mergers and industrial concentration which affect other countries and the strengthening of international cooperation."

Should countries wish to hold consultations on additional subjects, they are requested to inform the secretariat well in advance (no later than end September 1997) in order for all participants to prepare themselves for such consultations. Moreover, for each of the subjects referred to above, the secretariat would be grateful if experts would volunteer to make short presentations.

Item 3 (ii). Work programme, including technical assistance, advisory and training programmes on competition law and policy

Under this item, the Expert Meeting is expected to give guidance to the UNCTAD secretariat as to further work to be undertaken on competition law and policy.

In particular, the Expert Meeting will have before it a "Review of technical cooperation activities undertaken by UNCTAD and other intergovernmental organizations, as well as States bilaterally, with a view to strengthening its ability to provide technical assistance for capacity-building in the area of competition law and policy" (TD/B/COM.2/EM/9), in line with the request contained in paragraph 4 of the resolution adopted by the Third Review Conference in November 1995 (TD/RBP/CONF.4/15, annex I).

On the basis of this review of technical cooperation, the Expert Meeting is expected to give further guidance to the secretariat for its technical cooperation activities and recommend ways and means to implement the points made by the Third Review Conference in the same resolution (para. 4), as follows:

(a) Encouraging providers and recipients of technical cooperation to take into account the results of the substantive work done by UNCTAD in the above-mentioned areas in determining the focus of their cooperation activities;

(b) Encouraging developing countries and countries in transition to identify specific competition law and policy areas and issues which they would wish to see receive priority attention in the implementation of technical cooperation activities;

(c) Identifying common problems encountered in the competition law and policy area which might receive attention in regional and subregional seminars;

(d) Enhancing cost-effectiveness, complementarity and collaboration among providers and recipients of technical cooperation, both in terms of geographical focus of technical cooperation activities, taking into account the special needs of African countries, and the nature of cooperation undertaken;

(e) Preparation and execution of national, regional and subregional projects on technical cooperation and training in the field of competition law and policy, taking special account of those countries or subregions which have not received such assistance so far, especially in the field of law drafting and staff training, and enforcement capacity;

(f) Mobilizing resources and widening the search for potential donors for UNCTAD technical cooperation in this area.

In this connection, the Expert Meeting may also wish to decide how best to implement the request contained in paragraph 91 (iii) of "A Partnership for Growth and Development" with respect to "focusing on Africa by holding a regional meeting, creating relevant inventories and databases, and establishing a technical cooperation programme".

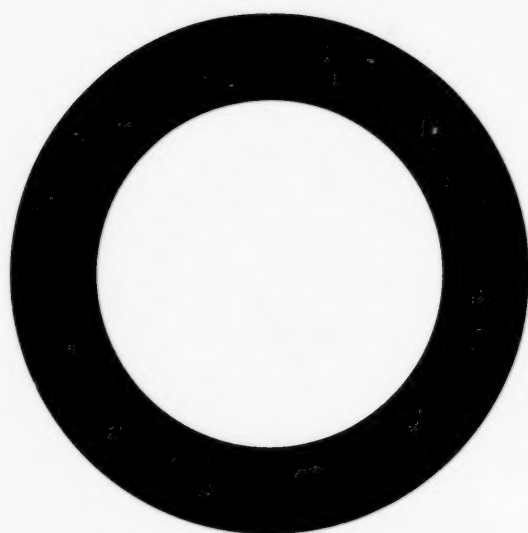
Item 4. Adoption of the report of the Expert Meeting on its second session

The Expert Meeting on Competition Law and Policy is required to report to the Commission on Investment, Technology and Related Financial Issues. 1/

Notes

1/ In view of the short duration of the session, the Rapporteur would be authorized to complete the final report after the close of the session.

2/ It should be noted that recurrent documents such as the Handbook of Competition Legislation and the Directory of Competition Authorities will continue to be published by the UNCTAD secretariat, but as non-sessional documents. It is expected that a limited number of these will be available in their preliminary form during the Expert Meeting.





**United Nations
Conference
on Trade and
Development**

Distr.
GENERAL

TD/B/COM.2/EM/9
10 September 1997

Original: ENGLISH

TRADE AND DEVELOPMENT BOARD

Commission on Investment, Technology
and Related Financial Issues
Expert Meeting on Competition Law and Policy
Geneva, 24 November 1997
Item 3 (ii) of the provisional agenda

WORK PROGRAMME, INCLUDING UNCTAD'S TECHNICAL ASSISTANCE, ADVISORY
AND TRAINING PROGRAMMES ON COMPETITION LAW AND POLICY

Review of technical assistance, advisory and training
programmes on competition law and policy

Note by the UNCTAD secretariat

CONTENTS

	<u>Page</u>
I. Introduction	2
II. Progress report on UNCTAD technical cooperation	2
III. Information on technical cooperation activities of member States and international organizations	8
(a) Information on technical assistance provided, planned or received	8
(b) Requests for technical assistance	20
Annex. Technical cooperation provided by UNCTAD since 1994	23

I. INTRODUCTION

1. In line with the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices adopted by the General Assembly in 1980, ^{1/} which, in section F, paragraphs 6 and 7, calls for technical assistance, advisory and training programmes on restrictive business practices, particularly for developing countries, the Third United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, in its resolution ^{2/} (November 1995), requested the UNCTAD secretariat, taking into account increased needs for technical cooperation and technical assistance in developing countries, countries in transition and other countries, to carry out a review of technical cooperation activities undertaken by UNCTAD and other international organizations, as well as States bilaterally, with a view to strengthening its ability to provide technical assistance for capacity building in the area of competition law and policy. The Third Review Conference also urged intergovernmental organizations and financing programmes and agencies to provide resources for technical cooperation activities in this area, and it appealed to States, in particular developed countries, to increase voluntary financial contributions and to provide necessary expertise for the implementation of such activities.

2. Subsequently, in its agreed recommendations, the Expert Meeting on Competition Law and Policy (November 1996) recommended to the Commission on Investment, Technology and Related Financial Issues, which endorsed the recommendation, that the UNCTAD secretariat be requested:

"(a) To pursue, within the available resources, its technical cooperation activities in the light of the resolutions adopted by the Third Review Conference and UNCTAD IX in 'A Partnership for Growth and Development' as well as the deliberations and consultations held during this Meeting;

(b) To finalize the review of technical assistance in time for the next Meeting, taking into account the comments and additional information to be received from Governments and international organizations by 31 January 1997." ^{3/}

3. Accordingly, this note contains a progress report on technical cooperation activities of the UNCTAD secretariat in the period since the Expert Meeting on Competition Law and Policy held in November 1996, as well as extracts of replies of member States and international organizations to the request for information in this area of the Secretary-General of UNCTAD (TD 420/8(5)Q) of 8 March 1996 and reminder of 17 March 1997. The Secretary-General is grateful for the replies to his note.

II. PROGRESS REPORT ON UNCTAD TECHNICAL COOPERATION

4. It should be noted that UNCTAD provides assistance in accordance with requests received, needs of countries concerned and resources available. The main types of the secretariat's technical cooperation activities can be described as follows:

(a) Provision of information about restrictive business practices (RBPs), their existence and possible adverse effects on the economy. This may involve a study on restrictive business practices in a specific country;

(b) Introductory seminars directed at a wide audience including government officials and academics, as well as business and consumer-oriented circles;

(c) Assistance to States which are in the process of drafting competition legislation in the form of provision of information on such legislation in other countries or advice as to drafting their competition legislation;

(d) Advisory services for the setting-up of a competition authority; this usually includes training of officials responsible for the actual control of RBPs and may involve training workshops and/or on-the-job training with competition authorities in countries having experience in the field of competition;

(e) Organization of seminars for States which have already adopted competition legislation, have experience in the control of RBPs and wish to consult each other on specific cases and exchange information;

(f) Assistance to States which wish to revise their competition legislation and seek expert advice from competition authorities in other States, so as to amend their laws in the most effective manner possible;

(h) Assistance in the area of creating a "competitive culture" and preparing developing countries, including the LDCs, as well as economies in transition, for future multilateral negotiations in this area.

5. Since its inception in 1986, UNCTAD's technical assistance, advisory and training programmes on restrictive business practices and competition policy have expanded considerably. Annex I contains a list of all major activities undertaken in this context since 1994. As for the period since the Expert Meeting in November 1996, the UNCTAD secretariat's main technical cooperation activities are described below.

Zambia national project

6. UNCTAD has been providing assistance for capacity-building to the Ministry of Commerce, Trade and Industry of Zambia under project ZAM/92/026. Following the adoption of the Zambian Fair Trade and Competition Act and the organization of a national Competition Seminar in December 1995, which recommended the creation of a Competition Authority, two advisory missions were undertaken by UNCTAD with a view to assisting in the establishment of the national Competition Commission. Specific arrangements for the training of officials of the Commission, as well as for a mission by a competition expert from Pakistan to assist in its actual establishment, were undertaken and subsequently reviewed by a tripartite Zambia/UNDP/UNCTAD meeting held in January 1997. In July 1997, the Executive Director and the Chairman of the Commission participated in a study tour to visit the German, Norwegian and Swedish competition authorities.

Competition law and policy formulation in Malawi

7. The process of developing competition policy and law in Malawi was initiated with the First National Symposium on Competition Policy and Legislation (June 1996). The Second National Symposium (2-3 December 1996) was attended by participants from the Government, the public and private sector, the donor community, academic circles, consumer associations, other relevant bodies and competition experts. The representative of UNCTAD made substantive presentations on competition legislation and participated in the debates.

8. The objectives of the symposium were basically twofold: educational, and assistance in the creation of a policy framework to develop competition legislation appropriate to the economic conditions prevailing in the country. It was agreed to create a Task Force responsible for the preparation of draft legislation. Following the symposium, the Task Force decided to start the process of drafting a Competition Bill with assistance from competition consultants and in close cooperation with UNCTAD. In response to a government request, UNCTAD has prepared a detailed budget of activities in this field to be undertaken in 1997, identified five experts in countries that already have competition legislation and competition authorities, and submitted their candidacies to the Task Force for consideration.

Mauritius national project

9. Upon request of the Government of Mauritius, the UNCTAD secretariat, under project MAR/93/005 and in cooperation with the Ministry of Economic Planning and Development, engaged a high-level expert from Australia who undertook a study related to market concentration and restrictive business practices in Mauritius (June 1995). The Government requested UNCTAD to follow up by providing assistance during the elaboration and adoption of legislation and to setting-up of the institutional framework for competition and consumer protection.

10. In line with envisaged activities, an extended version of a project was prepared by UNCTAD, and a British expert was engaged to advise, in cooperation with UNCTAD, the Government on the above-mentioned tasks and to provide recommendations on the main lines of appropriate action. During a mission to Mauritius undertaken by an UNCTAD staff member in 1997, all parties concerned were further consulted on the substantive and institutional aspects of competition and consumer protection policies and laws which would be appropriate for a small island developing country. A competition and consumer protection seminar was also organized for a wide audience of government officials, businessmen, representatives of consumer organizations, academics, economists and lawyers. In the course of this meeting, a firm political commitment was made by the Government to adopt a competition law and to strengthen and better implement consumer protection legislation. Following the seminar, another British competition expert was selected and engaged by UNCTAD to prepare the legislation.

Seminar in Sri Lanka organized by the German Foundation for International Economic Development (DSE), the Federal Cartel Office of Germany and UNCTAD

11. The Seminar on the Enforcement of National Laws on Competition and Restrictive Business Practices (Colombo, 28 April-2 May 1997), organized by the German Government (DSE and the Federal Cartel Office) in cooperation with UNCTAD, provided an interesting exchange of experiences between experts from national competition authorities of Germany and Sri Lanka. The Seminar was extremely timely in the light of the forthcoming establishment in Sri Lanka of a new, more integrated competition authority to deal with both competition and consumer protection issues. Presentations were made on practical difficulties encountered in developing countries in the adoption and enforcement of competition legislation and on competition policy at the national and international levels, including existing cooperation agreements.

Upcoming Seminars

12. At the time of writing, three seminars organized by UNCTAD, in cooperation with national authorities are envisaged in Georgia, the Islamic Republic of Iran, Nepal and Papua New Guinea. A seminar on competition policy organized in cooperation with the DSE is also scheduled to take place in Malaysia. In addition, resources permitting, and in line with the request in "A Partnership for Growth and Development" (para. 91 (iii)) the UNCTAD secretariat is planning to organize a regional seminar for Africa during the last quarter of 1997. The Government of Egypt has offered to host this seminar in Cairo.

Participation in seminars and conferences

13. During the period under review, staff members of UNCTAD took part in a number of seminars, workshops and conferences related to issues of competition policy and restrictive business practices. In particular, resource persons from UNCTAD made substantive presentations and participated in discussions in the following meetings:

- The "ESCAP/UNCTAD/UNDP Meeting of Senior Officials to Assist in Preparation of the First WTO Ministerial Conference" (Jakarta, 4-6 September 1996), which brought together high-level policy officials from ESCAP member countries and areas and representatives from intergovernmental organizations, specialized agencies and United Nations agencies. Presentations were made on competition policy and its interface with trade and foreign direct investment, as well as on the outlook for competition policy beyond the WTO Singapore meeting;
- A "Second Meeting on Competition Policy in Latin America and the Caribbean" (Caracas, 27-29 November 1996), organized by SELA with a view to coordinating the position of the Latin American and Caribbean Group concerning the treatment of competition issues at the WTO Singapore Ministerial Conference;
- "IDLI Workshop on Development Law" (Rome, 4-5 November 1996), conducted with lawyers from developing and transition countries

involved in economic policy-making. Presentations were made on UNCTAD's role and activities and on various aspects of competition law and policy in the context of the evolution of international development law, international economic law and North-South relations;

- The "ACP Preparatory Seminar to the WTO Singapore Ministerial Conference" (Brussels, 5-6 November 1996) organized for the ACP group of States;
- The "Second International Conference on Competition Policies in Transition Economies" (Moscow, 17-20 February 1997), held to exchange experiences and discuss various problems involved in developing competition policy and legislation in countries in transition;
- A "Seminar on Competition Legislation" (Douala, 10-13 March 1997), organized by the World Bank for government officials and business representatives in the context of improving the competitiveness of the economy of Cameroon. Presentations were made on competition policy as part of general economic policy, specific substantive aspects of competition legislation and experiences of African countries in developing competition law and policy;
- A Conference on "Competition Policy in a Global Economy" (New Delhi, 17-18 March 1997), organized by the World Bank in cooperation with the Indian Government, to discuss the interface between competition policy and trade, investment and economic development, as well as prospects for international cooperation on competition law and policy in the wake of decisions of the WTO Singapore meeting;
- The "APEC Competition Law and Policy Seminar" (Bangkok, 18-21 March 1997) conducted by senior officials for competition authorities in member economies of APEC, as well as representatives from OECD and UNCTAD;
- The "Regional Symposium on International Investment Arrangements: The Development Dimension" (19-20 June 1997, Fès, Morocco);
- The Fourth ALCA Working Group in Lima (Peru) (June 1997), to present UNCTAD's technical cooperation project for the Free Trade Area of the Americas (FTAA), prepared at the request of the Working Group. It was made clear at that meeting that the UNCTAD technical cooperation project on competition would be open for contributions and participation by all international organizations having experience in the field of competition and of States having experience in the implementation of competition law.

Other technical cooperation activities

14. Within the framework of the integrated country programme for the least-developed countries (LDCs), the UNCTAD secretariat has prepared

country-specific technical cooperation projects on developing competition legislation and policy in Bangladesh, Gambia, Guinea and Nepal. Draft project documents have been submitted to the Governments of these countries for consideration.

15. A draft project on "Support for the finalization of the initial application of Egypt's competition law" has been elaborated by UNCTAD with a view to providing technical support in the process of enacting competition legislation and establishing a competition authority responsible for the enforcement of competition legislation in Egypt. In the process of elaborating Egyptian competition legislation, UNCTAD also reviewed a draft law prepared by the Egyptian authorities and presented a detailed commentary to the Government of Egypt.

16. Advisory services related to the preparation of draft competition legislation have been provided to the Dominican Republic. A commentary has also been made on the draft competition and consumer protection legislation of the UDEAC member countries. With a view to assisting UDEAC countries in the formulation of common competition legislation, a technical cooperation project has been formulated by UNCTAD and submitted for the consideration of potential donors.

17. A number of policy-oriented and research studies have been prepared and will be published as a first volume of studies on competition, planned to be issued in 1997. They include, in particular, studies on "Advocacy functions of competition authorities"; "Competition aspects of the main WTO agreements"; "Competition policy in countries in transition", "FDI-related issues of competition and RBPs" and "The development dimension of competition law and policy".

Preparation of regional technical cooperation projects

18. Following the request of the Working Group on Competition Policy of the Free Trade Area of the Americas (FTAA), which identified technical cooperation as its immediate priority, a detailed questionnaire on the needs of the FTAA member countries in the field of competition law and policy was drafted and a regional advisor, based in Lima (Peru), was appointed by UNCTAD to prepare and complete the project. The replies to the questionnaire helped in the identification and quantification of the requirements in the region. Based on these replies, a full-fledged draft project document was prepared and submitted for the consideration of the FTAA Working Group at its fourth session in June 1997. It was decided to consider further a revised version of the project at the fifth session of the Working Group in September, once the commentary to be received from Governments has been incorporated into the draft project.

19. In line with the resolution of the Third United Nations Conference to Review All Aspects of the Set (November 1995) and the decisions taken by UNCTAD IX, which, in paragraph 91 (iii) of "A Partnership for Growth and Development", called upon UNCTAD to focus "on Africa by holding a regional meeting, creating relevant inventories and databases, and establishing a technical cooperation programme", and, in paragraph 97 (ii), to provide technical cooperation by "supporting strategies in promoting national

competition and consumer protection law and policy formulation", UNCTAD has prepared five detailed subregional technical cooperation projects which have been submitted to potential donors for consideration. These projects aim at providing support mainly to African countries in the formulation of national competition law and policy and consumer protection legislation and the establishment of competition and consumer protection authorities. At the time of writing, decisions by potential donors to finance such projects were still pending.

III. INFORMATION ON TECHNICAL COOPERATION ACTIVITIES OF MEMBER STATES AND INTERNATIONAL ORGANIZATIONS

(a) Information on technical assistance provided, planned or received

20. Below are extracts of the replies received to the Secretary-General's note TD/420/8(5)Q of 8 March 1996 and to the reminder to this note of 17 March 1997, which requested information on technical cooperation in the field of competition law and policy.

21. Australia in the implementation of the APEC Action Agenda, is likely to contribute towards policy dialogue in forthcoming workshops and to provide technical and policy development assistance, as requested by APEC member economies. Relevant information has been provided to assist Taiwan Province of China in the construction of a publicly accessible database on APEC competition policy and law. The provision of information was also planned for the publication in 1997 of a new edition of the annual APEC Deregulation Report of the Committee on Trade and Investment (CTI).

22. The Assistant Secretary of the Competition Policy Branch of the Australian Treasury presented a seminar on competition policy in Jakarta on 28-29 February 1996 at the invitation of the Indonesian Government. He also planned to present a paper on "Occupational regulation in Australia and the national competition policy framework" at the Competition Policy and Deregulation Workshop of APEC, held at Quebec City on 18-19 May 1997. During the visit of the Commissioner of the Taiwan Fair Trade Commission to the Australian Treasury in May 1996, Treasury officials explained Australia's competition policy, including Australia's experience with deregulation in the telecommunications, gas, electricity and financial sectors.

23. In Benin, the Ministry for Commerce has received assistance from an expert from the Federal Cartel Office (Germany) in connection with the preparation of its draft competition law. The amended draft takes into account recent trends in this field in both developed and developing countries.

The Government will need technical cooperation programmes covering:

- Scholarships to train officials responsible for the control of competition in specialized institutions, as well as internships with competition authorities experienced in this field;

- Seminars aimed at sensitizing businessmen and consumers on all aspects of competition, as well as on the provisions of the competition law itself. The media could be invited to disseminate relevant information to the public at large;
- The establishment of pertinent databases and a documentation centre at the Competition and Price Directorate, which is regarded as essential.

24. The Government of Costa Rica participated in the First Encounter of Competition Authorities in Cartagena, Colombia (December 1995), organized by the Spanish International Cooperation Agency (AECI). The Inter-American Development Bank (IDB) financed two internships, at the Federal Competition Commission (Mexico) and the Competition Authority in Chile respectively. The German Foundation for International Economic Development (DSE) organized a Seminar on Modern Competition Policy in June 1996 in Costa Rica. The Costa Rican authorities participated in the Second Meeting of Competition Authorities of Latin America in Caracas (Venezuela), organized with the technical and financial support of Spain and the Latin American Economic System (SELA). A two-week internship was made available by the United States Federal Trade Commission, and a Training Course on Competition Law and Economy was organized in Santa Cruz, Bolivia, under the auspices of the Spanish Government. As for requests for technical assistance, the Costa Rican Government has presented a project to the Spanish Government for two internships in 1997 at the Competition Tribunal in Spain, as well as a request to the Mexican Government for five internships at the Federal Competition Commission of Mexico. A Competition Seminar co-financed with the United States Federal Trade Commission is planned to take place as soon as Costa Rica finds sources of funding. The European Community is being approached to support a technical cooperation programme on a regional basis. This is related to efforts by the Permanent Secretariat of the General Treaty on Central American Economic Integration (SIECA) to prepare competition rules at the regional level.

25. In Cyprus, the Competition and Consumer Protection Service, in cooperation with a foreign expert, has completed the preparation of a draft law regarding the control of concentrations between enterprises which is based on European Council Regulation No. 4064/89 of 21 December 1989.

26. In 1994, the Estonian Competition Board received assistance from the European Union's PHARE programme involving seminars on competition law, detailed advice of PHARE experts on cases, and assistance on the reform of Estonian competition law. A short PHARE bridges project was implemented in 1996 in order to finalize the Draft Act on Competition that was presented to Parliament in April 1997. In the framework of the PHARE programme, experts were recruited from the United Kingdom, Denmark, Greece and Portugal. Study visits to the Swedish Competition Authority and to the United Kingdom and the participation of the Board's officials in several conferences in the field of competition law and policy were financed. Assistance was received from the Finnish Office of Free Competition in the form of seminars organized for public servants of the Estonian Competition Board and for Estonian lawyers, who were also advised on specific cases.

27. Two officials of the Board participated in the Canadian Government's Baltic Economic Management Programme, and within the framework of this programme they had a two-week study visit to the Canadian Bureau of Competition Policy. It was agreed with the Swedish Competition Authority to organize a number of seminars for Estonian judges in the second half of 1997. Competition Authorities of three Baltic States (Estonia, Latvia and Lithuania) agreed by memorandum of understanding to provide assistance to each other in their activities related to supervision of competition according to their national legislation.

28. Since November 1995, the Office of Free Competition of Finland has provided primarily bilateral technical cooperation to Estonia and the Russian Federation, mainly St. Petersburg and Petrozavodsk. Bilateral assistance has been funded from the Finnish State budget. Technical cooperation provided to Estonia has consisted, in particular, of seminars organized for competition authorities and lawyers on competition policy issues, and assistance in the implementation of competition law. The Office of Free Competition has also provided assistance on legislative, institutional and administrative issues and received two Estonian trainees for periods of two and three weeks, one on the basis of a bilateral agreement and the other for a traineeship organized by the European Commission. Bilateral technical cooperation with Estonia is based on a so-called Umbrella Agreement on Economic Cooperation and Support concluded by the Finnish and Estonian Governments and on the Agreement between the Ministry of Trade and Industry of Finland and the Ministry of Economic Affairs of Estonia on Economic Cooperation and Assistance. An Annual Programme for Finnish-Estonian Cooperation on economic and technical assistance between the two countries has been in existence since 1996. Cooperation with the Russian Federation has consisted of study trips conducted by Finnish officials to Moscow, St. Petersburg and Petrozavodsk. Similarly, regional administration officials have visited the Office of Free Competition and regional provincial governments. Finnish officials have also given assistance in the handling of individual cases in a seminar arranged in Petrozavodsk. The technical cooperation is based on a two-year agreement concluded in 1995 by the Office of Free Competition with the State Committee of the Russian Federation for Antimonopoly Policy and Promotion of New Economic Structures (SCAP). The agreement will be renewed in the near future. In 1995-1997 and earlier, the Office of Free Competition provided technical cooperation in the handling of some individual cases with Lithuanian, Polish, Romanian, Slovenian, Czech and Bulgarian competition authorities. In addition to bilateral cooperation, the Office has participated in technical assistance coordinated by the European Commission. Technical cooperation provided within bilateral and multilateral framework will continue in the future.

29. The Competition Authority of Italy has participated in training and technical assistance seminars in favour of the Central and Eastern European countries organized by the OECD in Vienna (in 1993 and 1994), St. Petersburg (in 1995 and 1996), Budapest (1994), Moscow (1995), Istanbul (1996) and Buenos Aires (1996). At the bilateral level, the Italian Competition Authority participated in two technical assistance programmes set up by the European Commission. In 1995 and 1996, the Authority received officials from countries in transition. The training courses mainly involved examining the Italian Competition Law, links with the European Commission, methods of juridical and economic analysis used by the Authority in case of abuses, of

cartels and of concentrations, and the links between liberalization, privatization and competition. In 1996, the Competition Authority met with the Presidents of the Czech Republic and Ukraine. Participants from these countries have shown keen interest in substantive aspects of competition policy, as well as the effective application of the law to concrete cases. Privatization and public utilities were also of special interest to them. The Italian Competition Authority believes in this respect that it would be necessary to study in more detail the procedural aspects and the institutional framework which could ensure efficient implementation of competition rules.

30. In Lithuania, technical assistance for the State Competition and Consumer Protection Office was provided in 1995 by the Federal Trade Commission and the Department of Justice of the United States. Short- and long-term missions were organized at the Office to assist in the revision of the competition law and the evaluation of mergers and vertical restraints, abuse of dominance, etc. Five members of the State Competition and Consumer Protection Office participated in a training programme in the United States. In addition, a technical assistance project was prepared under the European Union's PHARE programme in 1995. The project consists of two components: the first concerns assistance in drafting an amendment to the existing competition law; this includes three man-months of legal consultancy and support for various information activities in connection with the new law. The second component involves the provision of on-the-job training for five Lithuanian officials at the Commission's Directorate-General IV (DG-IV) and relevant administrations in European Union member States.

31. In Mauritius, UNCTAD organized a study on market concentration and restrictive business practices (1995). As a follow-up to this study, UNCTAD and UNDP have agreed to provide financial and technical support for the recruitment of a consultant to advise on and assist in the preparation of appropriate competition and consumer protection legislation with a view to the setting-up of a Monopolies and Mergers Commission and the appointment of a Director of Fair Trading and a Consumer Ombudsman. UNCTAD has already recruited two consultants to carry out the assignment. One of these consultants and a staff member of the UNCTAD secretariat were in Mauritius in 1997, and a seminar was held with the parties concerned with competition policy and consumer protection to enable the consultant to gather as much information as possible. The consultant has submitted a preliminary report which is being studied.

32. In Namibia, the Ministry of Trade and Industry was carrying out a comprehensive review of the existing legislation in the field of Commercial and Company Law, Law of Property, Law of Contract, Intellectual and Industrial Property Law and the impact of the Labour Act and the judicial system on competition in Namibia. The principal objective of this review was to formulate a national competition policy framework which would be consistent with the country's international obligations and which would identify solutions to the constraints arising from unfair trade practices.

33. Technical cooperation provided or planned by Peru consists of:
(a) training in the National Institute for the Defense of Competition and Protection of Intellectual Property (INDECOPI) for officials of developing

countries preparing or applying competition legislation; (b) sending officials from the Commission of Free Competition of INDECOPI to advise developing countries on the implementation of competition legislation.

34. The Antimonopoly Office of the Slovak Republic is taking advantage of the possibilities offered by the PHARE programme, complemented by resources from the Know-How-Fund, USAID and the German Foundation for International Cooperation. It participates in international cooperation provided through the EU, CEFTA, OECD, CIS and UNCTAD and through international agreements on free trade which Slovakia is bound by. It maintains contacts with countries of Europe and the United States, its closest cooperation being with countries of Central and Eastern Europe and the EU. Priorities are set by the Office in respect of long-term goals (e.g. a decree with detailed provisions in respect of exemptions from prohibition of agreements restricting competition) and of current needs (e.g. in the field of competition in banking, detection of international cartels, linkage between competition policy and procurement, dumping etc.). Priority attention is expected to be given to the following issues:

- Harmonization of the competition legislation of the Slovak Republic with competition laws of the EU and secondary legislation;
- Application of Article 64 of the Euroagreement - Implementing rules;
- Monitoring of amendments in primary and secondary legislation of the EU;
- Ensuring the compatibility of Slovakia with the EU in the field of information systems and databases;
- Continuation of contacts with the EU, OECD, UNCTAD, CEFTA and the United States.

35. For 1997, the Antimonopoly Office of the Slovak Republic has prepared a project in the framework of the Country Operational Programme 1997, which is to provide for continuing activities contributing to the reform of the national system of competition protection in the light of the requirements of the EU.

36. In Spain, the Department of Economic Policy and Competition (Dirección General de Política Económica y Defensa de la Competencia) represents Spain in international forums and has been involved in bilateral activities with many countries, in particular with Mediterranean countries, Central and Eastern Europe, the Far East, etc. In Latin America, the First Meeting of Spanish and Latin American competition authorities in Cartagena de Indias (November 1955) was the starting point for a series of activities and annual meetings which include: bilateral cooperation programmes; training courses, seminars and scholarships; exchange of information; advisory missions; and cooperation in the application of competition legislation. The Second Meeting took place in Caracas (Venezuela) in November 1996. In 1997, within the framework of cooperation of the Spanish International Cooperation Agency

(Agencia Espanola de Cooperacion Internacional) (AECI) with SELA, the Spanish Agency financed the organization of an intensive training course (19-28 May 1997, Santa Cruz) for participants from Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Mexico, Nicaragua, Panama and Venezuela. It also financed two weeks' training organized in Spain for Latin American officials.

37. In Sri Lanka, under a Japanese training programme, one officer from the Fair Trading Commission was nominated for training on antimonopoly law. The programme was conducted in March 1996 and the total cost was met by the Japanese Government. The training was found to be extremely useful at a time when Sri Lanka is considering redrafting its Competition Law to include both RBPs and consumer protection. A conference on competition policy was held in New Delhi, India, on 17-19 March 1997, and two high-level officials from the Fair Trading Commission participated. It was organized by the Private Sector Development Department and the Economic Development Institution of the World Bank, in conjunction with India's National Council for Applied Economic Research. The participants were drawn from South Asia and OECD member countries. The conference resulted in very close understanding among countries in the region, as well as with the developed countries, and the exchange of views was found both useful and fruitful. In addition, the German Foundation for International Development (DSE) arranged a seminar in Colombo from 28 April to 2 May 1997. Experts from Germany and UNCTAD conducted this seminar on the "Enforcement of national laws on competition and RBPs in developing countries". Thirty-five participants drawn from Sri Lanka's Fair Trading Commission and other relevant agencies took part in this training.

38. From 1994 to July 1996, the Competition Authority of Sweden received study visits from authorities of a number of countries including Hungary, Slovakia, the Baltic States, Poland, Slovenia, the Russian Federation and China. The purpose of these visits was to give technical assistance on legislation, institutional frameworks and enforcement issues. The duration of the visits varied from half a day up to two weeks.

39. The Government of Zimbabwe has recently approved the establishment of an Industry and Trade Competition Commission. The Ministry of Industry and Commerce is responsible for the establishment of the Commission and has asked USAID and the Commonwealth secretariat for competent experts to provide technical assistance in the following areas: (a) advising the Industry and Trade Competition Commission on the discharge of its mandate; (b) looking into the status of the monopolies legislation (i.e. the Competition Act) in Zimbabwe, advising on its effective implementation and suggesting any changes if necessary; (c) assisting with the establishment of the Industry and Trade Commission and advising on appropriate institutional arrangements to ensure a measure of separation between the investigative and prosecuting aspects of the Commission's work, as distinct from the adjudicative aspects; (d) working with local counterparts with a view to providing on-the-job training for them; (e) advising on proactive initiatives to educate the public about the Act; (f) advising on the nature and recruitment of personnel of the Commission.

40. The European Commission (Directorate-General IV (DG-IV)) has a twofold strategy for the provision of technical assistance in the area of competition to the associated countries of Central and Eastern Europe (CEECs): firstly, a

horizontal approach which aims at making European competition policy more widely known; second, a country-by-country approach targeted at the individual needs of each of the associated countries. In cooperation with DG-1A, DG-IV has drafted the terms of reference of technical assistance programmes under each of these two pillars. The European Commission (DG-IV) considers that the development of a market and competition "culture" among the CEECs' economic agents and the public is a prerequisite for efficiently functioning markets and for a sufficient understanding of the commercial and economic conditions and consequences of integration into the EU. The need to have economic agents (officials, judges, lawyers, academics, etc.) with a good knowledge of the mechanisms of the market, and in particular the need for competition rules to protect the regular functioning of the market, is one of the priorities of DG-IV's technical assistance strategy. The other priorities, such as approximation of legislation, were carried out and are still carried out within national programmes. Within the framework of the horizontal programme, DG-IV, in cooperation with DG-1A and member States, plans to continue with the following in 1997:

- Collective traineeships;
- Central European conference on competition policy;
- Specific training (training for academics, training for judges);
- Informatics link.

41. The collective traineeship project aims at offering an in-depth introduction to the European Union's antitrust and State aid policy. The target group is young officials from the various competition and State aid authorities in the CEECs. Each authority may send up to four officials. So far, the programme has been organized in two parts. The first part of the collective traineeship takes place in Brussels for a period of two weeks. During this time the candidates attend lectures given by officials of DG-IV and participate actively in working groups. The second part of the collective traineeship takes place in a member State for a period of one or two weeks. The purpose of this extended training is to acquaint the trainees with the principles, objectives, and structures of competition law and policy within the member State and its interrelationship with EU competition policy. As regards its part in Brussels in 1995, the first collective traineeship focused only on antitrust policy. The lectures covered economic issues and competition rules. Documentation was provided on each selected topic. Subsequently, the candidates drafted a short report and an analysis paper on topics selected during the stay in Brussels. In 1996 the second collective traineeship also included lectures and working groups on State aid policy. The participants were divided up in two groups. The first focused solely on State aid, the second on antitrust issues. During the course, each participant received competition books and documentation. DG-IV believes that collective training is an effective way to provide the CEECs with the appropriate information on EU rules and procedures. It seems more useful and efficient than purely bilateral relations and training.

42. In 1995-1996, in cooperation with the associated countries, DG-IV organized two Central European conferences on competition policy. The first

conference was organized in cooperation with the Office of Economic Competition of Hungary in Visegrad on 19-21 June 1995. The second one was organized in cooperation with the Czech Ministry for Economic Competition in Brno on 9-10 May 1996. DG-IV also organized the Baltic Booster Conference in cooperation with the three Baltic States in April 1996 in order to boost competition policy development in the Baltic States so that it catches up with practice in other Central European countries. The Central European conferences aim at high-level exchanges of views on competition policy, thereby contributing to the enhancement of cooperation both between the European Commission and CEECs' competition authorities and among the CEECs' competition authorities themselves. Each conference is an occasion for authorities from all CEECs and the Commission to analyse antitrust and State aid policies together in a systematic manner. It is a unique event in bringing together so many competition authorities (EU and all associated countries) on both antitrust and State aid. At the end of each of the conferences that have taken place, the heads of the antitrust authorities adopted a Joint Action Programme for Competition as a basis for future common efforts towards accelerating the implementation of the Europe Agreements.

43. Under specific training activities, special attention was given to training for academics. One of the objectives of the PHARE Programme on Competition Protection is to increase the awareness of competition policy within a wider public of economic operators. The Commission believes that academics in CEECs could be catalysts in improving this awareness, and it therefore wishes to encourage the academic world in CEECs to pay attention to competition policy. The objective of the programme consists in developing an adequate training programme for academics working at economy universities in CEECs and promoting contacts and the exchange of information with training institutions and/or universities from within the EU. The training focuses on the transfer of (basic) information in the area of competition (depending on the level of the academics), stimulating academic interest within the CEECs for this area of policy, and establishing informal contacts between selected academics. The training programme was organized in October 1996 by the European Public Law Center, which is based in Athens. The participants (all academics, though some also hold positions as lawyers or as a judge) came from five CEECs (Poland, Czech Republic, Slovakia, Bulgaria and Romania) and six universities. The seminar lasted two weeks. Each day there were lectures in the morning and a tutorial in the afternoon. During the tutorial, the lecturers answered questions, reviewed certain topics and entered into discussion. As a follow-up, the participants have been asked to continue working on the topic and to present a publication in the near future.

44. In 1997, the training programme should focus on academics from economic universities in CEECs. The training is to be organized by the University of Dublin in September 1997. In 1997, the Commission also plans to organize training for judges and intends to finance training for officials of the CEECs on State aid, as this subject will become increasingly important in the future. The idea is to invite officials who are working in aid-granting authorities, i.e. not officials of monitoring authorities, who receive technical assistance under other programmes.

45. The objective of the Radepeco programme is to improve communications between Commission services (DG-IV) and competition authorities in CEECs by

using advanced information and communication technologies. The project includes the delivery and installation of the required hardware and software, connection to a communication network, and reporting, accounting and billing services. It also includes training of users, user support and maintenance of the system. A company has been selected by an evaluation committee, and the conclusion of a contract with this company is expected towards the end of 1997. DG-IV considers that the dissemination of information is of major importance at this stage of development. All competition authorities of CEECs receive the Competition Policy Newsletter. Moreover, in 1997, with a view to improving officials' knowledge, DG-IV, in cooperation with DG-1A, has decided to provide a number of law reviews for one year free of charge to all competition authorities in CEECs. In the framework of PHARE programmes, most of the associated countries have received many books on competition policy which have been recommended by the PHARE consultants. For the sake of consistency, DG-IV has compiled a list of relevant books on antitrust and State aid. The lists will be sent out to competition authorities and State aid monitoring authorities in CEECs. Moreover, the Commission (DG-1A and DG-IV) has sponsored a special issue from the EMP Magazine.

46. The major technical assistance projects conducted by the OECD in the area of competition policy since 1995 are set forth below. Some of these projects were carried out jointly with the World Bank, and many benefited from the assistance of national competition authorities. The list also includes projects scheduled for the rest of 1997. Except where otherwise noted, the participants were employees of the national competition authority concerned.

47. The following major conferences were organized:

- 9-12 May 1995 - *Competition and Regulation in Network Infrastructure Industries* - attended by competition officials and regulators from the Czech Republic, Hungary, Poland and Slovakia assisted by the World Bank and the European Bank for Reconstruction and Development.
- 26-28 September 1995 - (jointly sponsored and principally organized by the Russian Antimonopoly Committee) *International Conference on Competition Policy in Transition Economies* - attended by competition officials from a variety of countries (particularly those of Eastern Europe and the CIS), representatives of several international organizations, scholars, consultants and law practitioners from Moscow firms and organizations, and a large number of Russian Antimonopoly Committee staff members from all parts of the Russian Federation.

48. The following seminars were organized:

- Hungary: April 1996 - *Economic Issues Involved in Adjudicating Hungarian Competition Cases* - attended by judges of the Supreme Court and Metropolitan Court and staff of the Office of Economic Competition;
- Poland: December 1995 - *Economic Issues Involved in Adjudicating Polish Competition Cases* - attended by judges of the Antimonopoly

Court and Supreme Administrative Court and staff of the Ministry of Justice, Ombudsman Office, Antimonopoly Office; observed by two officials of the Russian Supreme Arbitration Court;

- Russian Federation: (a) Summer 1995 (in collaboration with the World Bank) - missions to Irkutsk and Novosibirsk to discuss competition policy implementation with regional Antimonopoly Committee staff; (b) 2-6 December 1995 - *Topics in Competition Policy*; (c) May 1996 - *Economic Issues Involved in Adjudicating Russian Competition Cases* - attended by judges from the Arbitration Court and officials of the Antimonopoly Committee; (d) November 1996 - *Implementation of Competition Law in the Russian Federation* - attended by judges of the Arbitration Court and officials of the Antimonopoly Committee; (e) December 1996 - *Topics in Competition Policy* - attended primarily by staff of the Antimonopoly Committee but with representation as well from: Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Tadjikistan, Ukraine and Uzbekistan; (f) November 1997 - *Implementation of Competition Law in the Russian Federation*; (g) 1-5 December 1997 - *Topics in Competition Policy*;
- Slovakia: October 1996 - *Economic Issues Involved in Adjudicating Slovak Republic Competition Cases* - attended by judges of the Supreme Court and staff of the Antimonopoly Office, including its Commission;
- Ukraine: (a) October 1995 - *Effective Competition Policy Enforcement*; (b) June 1996 - *Effective Competition Policy Enforcement*; (c) 23-27 June 1997 - *Effective Competition Policy Enforcement*;
- Czech Republic, Hungary, Poland and Slovakia: November 1995 - *Seminar on Vertical Restraints* - attended by competition officials from the four countries;
- Seminars at the Joint Vienna Institute: *Topics in Competition Policy* - two-week seminars typically involving delegates from the competition offices of Bulgaria, Czech Republic, Estonia, Georgia, Hungary, Latvia, Lithuania, Poland, Romania, Russian Federation, Slovakia, Ukraine, and, less frequently Armenia, Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Turkmenistan and Uzbekistan; the seminars are focused on real competition cases submitted by the participating countries; except for the first year (when three shorter seminars were presented) the seminars have been held annually in Vienna since 1992;
- Seminars at the OECD's Centre for Private Sector Development (Istanbul): (a) June 1995 - *Effective Competition Law Enforcement* - attended by officials from Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Mongolia, Turkmenistan and Uzbekistan; (b) May 1996 - *Merger Enforcement Issues* - attended by officials from Kazakhstan, Kyrgyzstan, Mongolia, Russian Federation and Ukraine; (c) October 1996 - *Effective*

Competition Law Enforcement - attended by officials from Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Mongolia, Russian Federation, Turkmenistan, Ukraine and Uzbekistan; (d) April 1997 - *Detecting, Investigating and Prosecuting Cartels* - attended by officials from Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Mongolia, Russian Federation, Ukraine and Uzbekistan; (e) October 1997 - *Deconcentration and Demonopolization*; (f) November 1997 - *Institutional Aspects of Competition Law Enforcement*;

- Baltic Rim Economic Forum: June 1997 - *Competition Policy in the Context of Regional Integration* - attended by competition officials of Estonia, Latvia, Lithuania and St. Petersburg;
- Latin American seminars: (a) October 1996 (organized in conjunction with the Government of Argentina and the World Bank) *Emerging Market Economy Forum Workshop on Competition Policy and Enforcement* - attended by competition officials from Argentina, Brazil, Chile, Colombia, Peru, South Africa, Uruguay and Venezuela, with panelists drawn from the Organization of American States (OAS) and Australia, Canada, the European Commission, France, Germany, Italy, Japan, Mexico, Poland, Slovakia, Turkey and the United States; (b) July 1997 (organized in cooperation with the World Bank, the Brazilian competition agency (CADE) and a private economics institute (IBRAC)) *Competition Policy and Economic Reform* - attended by officials from Argentina, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Nicaragua, Paraguay, Peru, Uruguay and Venezuela, with panelists drawn from Canada, the European Union, France, Japan, Mexico and the United States.
- APEC region seminars: speakers and panelists contributed by OECD to a variety of seminars on competition policy in the APEC region, including: Taiwan Province of China 1995, New Zealand 1995 (APEC), Philippines 1996 (APEC), Republic of Korea 1996, 1997 (Korean Fair Trade Commission, Korean Development Institute), Thailand 1996 (APEC).

49. Advice on laws, commentaries and methodologies was provided as follows:

Chile: 1995 - commented on competition law amendments;

Kazakhstan: 1995 and 1996 - commented on amendments to competition law;

Lithuania: 1995 - commented on draft amendments to competition law;

Malaysia: 1995 - advised on draft competition law;

Russian Federation: 1995 - commented on: market power methodology; telecommunications restructuring plans; draft statute and Presidential Edict pertaining to the Russian Antimonopoly Committee; draft statute pertaining to the territorial administration of the Russian Antimonopoly Committee; draft statute pertaining to the register of economic subjects

having market shares exceeding 35 per cent; 1996 - commented on draft methodologies concerning market definition and evaluating market power and merger review and on commentaries relating to cartels; also commented on some CIS Interstate Council draft agreements on cooperation in competition policy (including information sharing); 1997 - commented on draft law on wholesale trading, draft commentary to law on competition, and draft methodologies (abuse of dominance, actions and agreements of State executive bodies, evaluation of the effects of restrictive trade measures on internal competition, horizontal and vertical agreements, and merger review).

Ukraine: 1997 - advised on amendments to the competition law.

50. Other activities included working jointly with the World Bank on (a) a revised and updated *Glossary* of the legal and economic terms fundamental to competition law and policy (to be published in 1997), an earlier version of which has been translated into several languages, including Russian and Spanish; and (b) a *Competition Manual* for transition and developing countries (to be published in 1997).

51. The World Bank's Competition and Strategy Group within the Private Sector Development Department seeks, in general, to foster business-government cooperation to promote policy reforms aimed at creating a responsive business environment, strengthening linkages to the international economy, and improving access to up-to-date technology. In the context of the achievements of a first generation of policy reforms in terms of trade liberalization, price stability, lower fiscal deficits and improved balance of payments, the Group believes that a dynamic and competitive environment, underpinned by competition policy and legislation adequately tailored to a country's specific circumstances, is an essential characteristic of successful second-generation policy reforms.

52. The Group's activities are geared towards promoting best practice in the field of competition policy, legislation and institutions. Over the last three years, it has assisted in the design, implementation or strengthening of competition policy, legislation, institutions and enforcement in countries like Argentina, Brazil, Cameroon, Colombia, El Salvador, Gabon, Jordan, and Peru. Additionally, the Group has organized several conferences, seminars or workshops in Argentina (in partnership with OECD), Colombia, Chile, India, Indonesia, Nepal (in partnership with UNCTAD), Peru and Turkey. In Vienna, it held seminars and workshops for Czech, Estonian, Latvian, Lithuanian, Polish, Slovak and Ukrainian officials.

53. In partnership with OECD, the Group has prepared a *Glossary of Industrial Organization Economics and Competition Law*, that has been translated to several languages. It is nearing completion (jointly with the OECD) of a practical guide on the design, administration and enforcement of competition law and policy, the "World Bank/OECD Competition Policy and Operations Manual", planned to be published by the end of June 1997.

54. Another Group within the Private Sector Development Department, i.e. the Private Participation in Infrastructure Group, covers issues of private participation in infrastructure (communication, energy, transport, water and

sanitation), providing advice on market structure and competition, infrastructure regulation, privatization and concession-type schemes, and concession award and project finance.

55. The Group supports the International Forum for Utility Regulation in terms of organizing Annual Expert Meetings (Oxford in 1996, Melbourne in 1997), collaborating with the Utility Research Centre at the University of Florida to develop an International Training Course on Utility Regulation and Strategy, and printing an International Directory of Utility Regulatory Institutions. In addition, it has produced a number of valuable publications on competition and regulation and has organized or participated in workshops, seminars or conferences in a large number of countries, including Argentina, Brazil, Belgium, Chile, China, Ecuador, France, India, Indonesia, Mexico, Sweden, the United Kingdom and Uruguay.

56. Outside the Private Sector Development Department, the East Asia and Pacific Division is currently providing technical assistance for a number of legislative drafting subprojects in China, including an Antimonopoly Law; it has already conducted study tours to the United States and is planning tours to Germany and Australia. An international seminar on China's economic law reform is being organized in Beijing by the Chinese State Commission on the Reform of the Economic System under the auspices of the East Asia and Pacific Division. The Latin American and Caribbean Region Technical Department has recently prepared a technical study on competition policy and related policy areas such as consumer protection, intellectual property, regulation and bankruptcy.

(b) Requests for technical assistance

57. Below are extracts from the replies received, which are related to requests for technical assistance with identification of specific competition law and policy areas or issues which the States would wish to see receive priority attention.

58. Benin: A specific project could be launched to train competition enforcing personnel, as well as entrepreneurs and consumers, and also to create an archive of documents on competition legislation.

59. Costa Rica: International technical assistance is requested to facilitate the revision of the existing competition legislation.

60. Ethiopia: The Ministry of Trade and Industry has initiated studies on drafting competition legislation and requests technical assistance to train the necessary personnel and draft national competition legislation.

61. Estonia: There is a need to strengthen the Competition Board and train its staff and judges in the field of competition legislation. Training in the area of RBPs and merger control is also required.

62. Guinea: Assistance is requested for the formulation of competition policy, improvement of the existing law and training of personnel responsible for the enforcement of competition legislation.

63. Kenya: The Monopolies and Prices Commission requires logistical assistance to prepare regional workshops for trade officials of the countries within the EAC (East African Community), PTA (Preferential Trade Area for Eastern and Southern African States), COMESA (Common Market for Eastern and Southern Africa) and other organizations. Assistance is also required in training the Commission's officers on the premises of contemporary competition authorities, in making the Commission autonomous from direct governmental control, in mounting a course on competition policy at the Institute of Administration, and in facilitating access to materials on international trade and competition issues.

64. Lithuania: Technical assistance is needed in particular to train staff in the field of investigation and application of procedures in the case of horizontal and vertical agreements, merger control and abuse of dominant positions. Such assistance could be provided through long-term training programmes in countries having experience in competition law and policy, as well as through participation in courses, seminars and international conferences.

65. Malta: Assistance is required in the following areas: (a) organizing seminars in Malta aimed at sensitizing business and consumer-oriented circles to the importance of competition policy; (b) holding training workshops for the staff of the Office for Fair Competition of Malta; (c) the possible funding of an expert to be attached to the Office for Fair Competition in Malta.

66. Nicaragua: Assistance is requested in the form of: (a) training in the areas of law application procedures used by other competent authorities and analysis of specific cases; (b) seminars to disseminate information on the concept of competition; (c) establishment of a competition authority and preparation of studies on competition and related policies.

67. Panama: Special interest was indicated in obtaining assistance in the areas of institutional modernization and human resources development.

68. Peru: Assistance is required in the form of training of personnel of INDECOPI in competition authorities abroad (the trained personnel will, in turn, train other officials and postgraduate students and will provide information at the national, regional and international levels); visits of experts from other competition authorities to provide assistance in specific areas; methodological support in the following areas: definition of relevant markets, dominant position, parallel practices, indices, etc.; elaboration of methodology for market investigation, for assessment of the impact of competition legislation on the economy and for definition of standards of evidence that can be used in courts; training of officials with a view to obtaining and canalizing international financial support to requested areas; review of specific problems of competition legislation and competition authorities of developing countries; comparative analysis of application of competition legislation in developed and developing countries in order to understand better problems of applying legislative norms of the former in the latter.

69. Philippines: Assistance is required in drafting comprehensive legislation on consumer protection and competition.

70. Togo: There is a need to formulate competition law which would be based on existing legislation and adapted to the Togolese situation. There is also need to train adequate personnel to supervise competition practices, and financial and technical assistance is necessary in this area.

71. Zimbabwe: Assistance is requested in the areas enumerated in paragraph 39 above.

Notes

1/ General Assembly resolution 35/63 of 5 December 1980 (TD/RBP/CONF.10/Rev.1).

2/ Annex I to the report of the Third United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices (TD/RBP/CONF.4/15).

3/ Annex I to the report of the Expert Meeting on Competition Law and Policy on its first session (TD/B/COM.2/3; TD/B/COM.2/EM/5).

Annex

TECHNICAL COOPERATION PROVIDED BY UNCTAD SINCE 1994

Year	Type of activity	Country(ies) of participants	Foreign experts from:	Location
1994 January	National seminar	Malaysia	Australia Norway Pakistan	Kuala Lumpur (Malaysia)
February	Regional seminar for FORUM countries	Cook Islands Fiji Kiribati Papua New Guinea Solomon Islands Tonga Samoa	Australia Norway New Zealand	Suva (Fiji)
March	National seminar	China	Germany United Kingdom	Shanghai Shenzhen (China)
June	World Bank/UNCTAD Conference on Competition Policy and International Trade	Chile Colombia Peru Venezuela Mexico	United States of America EU	Bogotá (Colombia)
	Subregional seminar	Bahamas Belize Jamaica	Norway	Kingston (Jamaica)
	National seminar	Trinidad and Tobago	Jamaica Norway	Port of Spain (Trinidad and Tobago)
August	National seminar	Philippines	Germany	Manila (Philippines)
December	National seminar	Dominican Republic	Norway Venezuela	Santo Domingo (Dominican Republic)
	National seminar	Costa Rica	Norway Venezuela	San José (Costa Rica)
	National seminar	Nicaragua	Norway	Managua (Nicaragua)
	National seminar	El Salvador	Norway	San Salvador (El Salvador)
	National seminar	Peru	Germany	Lima (Peru)

Year	Type of activity	Country(ies) of participants	Foreign experts from:	Location
1995 January	International/ CUTS g/ Conference	India	Germany Pakistan Philippines Republic of Korea	New Delhi (India)
February	National seminar	Guatemala		Guatemala City (Guatemala)
	Advisory mission	El Salvador		San Salvador (El Salvador)
October	Regional African seminar	Tunisia Morocco Egypt South Africa Gabon Mauritania Kenya Zambia Zimbabwe	France World Bank	Tunis (Tunisia)
	Regional seminar for Latin America and the Caribbean	Argentina Bolivia Brazil Chile Peru Colombia Venezuela Jamaica Dominican Republic Trinidad and Tobago Mexico Guatemala El Salvador Panama Costa Rica Nicaragua	World Bank	Caracas (Venezuela)
	National seminar	Bolivia	Germany	La Paz (Bolivia)
December	National seminar	Zambia	Kenya Norway Pakistan South Africa United Kingdom	Lusaka (Zambia)
	Advisory mission	South Africa	Norway United Kingdom	Pretoria (South Africa)
	National seminar	Pakistan	Germany	Islamabad (Pakistan)

Year	Type of activity	Country(ies) of participants	Foreign experts from:	Location
1996 January	Advisory services	Bolivia		La Paz (Bolivia)
March/April	Advisory services	Guatemala		Guatemala City (Guatemala)
May	Advisory services	Colombia		Bogota (Colombia)
June	First national symposium	Malawi	South Africa	Lilongwe (Malawi)
	National seminar	Honduras		Tegucigalpa (Honduras)
	National seminar	Costa Rica	Germany	San José (Costa Rica)
	National seminar	Cuba	Venezuela Chile	Havana (Cuba)
August	Advisory services	Paraguay		Asunción (Paraguay)
September	Regional seminar	Rep. of Korea Malaysia Russian Fed. Thailand	World Bank OECD	Seoul (Republic of Korea)
December	Second national symposium	Malawi	United Kingdom	Lilongwe (Malawi)
	Advisory services	Zambia		Lusaka (Zambia)
1997 February	Advisory services	Mauritius		Port Louis (Mauritius)
	National seminar	Mauritius	United Kingdom	
March	Advisory services	Dominican Rep.		Santo Domingo (Dominican Rep.)
April	National seminar	Sri Lanka	Germany	Colombo (Sri Lanka)

a/ Consumer Unity and Trust Society.



**United Nations
Conference
on Trade and
Development**

Distr.
GENERAL

TD/B/COM.2/EM/10
18 September 1997

Original: ENGLISH

TRADE AND DEVELOPMENT BOARD
Commission on Investment, Technology
and Related Financial Issues
Expert Meeting on Competition Law and Policy
Geneva, 24 November 1997
Item 3 of the provisional agenda

EMPIRICAL EVIDENCE OF THE BENEFITS FROM APPLYING COMPETITION LAW
AND POLICY PRINCIPLES TO ECONOMIC DEVELOPMENT IN ORDER TO ATTAIN
GREATER EFFICIENCY IN INTERNATIONAL TRADE AND DEVELOPMENT

Report by the UNCTAD secretariat

CONTENTS

	<u>Paragraphs</u>
Summary and conclusions	1 - 5
Introduction	6 - 8
Chapter I. Competition and efficiency	9 - 18
A. Static efficiency	9 - 15
B. Dynamic efficiency	16 - 18
Chapter II. Competition and growth	19 - 26
A. Competition, deregulation and welfare	19 - 22
B. Competition and industrial policy	23 - 26
Chapter III. The benefits of applying competition law and policy	27 - 36
A. The effects of RBP control and the need for information	27 - 33
B. Competition advocacy	34 - 36

SUMMARY AND CONCLUSIONS

1. The benefits of competition may be assessed on the basis of data relating to the effects of collusion or concentration and, conversely, the effects of RBP controls or of deregulation upon productivity, prices, profit margins, the persistence of profits, the flexibility or adjustment speed of prices or profits, incentives for technological innovation, consumer and producer welfare, economic growth and competitiveness in international trade. There is a shortage of data as to the effects of RBP controls and competition advocacy efforts, and there have sometimes been tensions and trade-offs among competition and static and dynamic efficiency. But there is still evidence that the application of RBP controls has had an impact, both in individual cases and by having a deterrent effect, helping to create a climate favourable for competition. To maintain such a climate, however, continuing efforts have needed to be made to enhance the effectiveness of enforcement. Also, deregulation has been more effective when backed up by RBP controls.

2. The evidence available is mainly about the experiences of developed countries, but it still indicates that there would be substantial benefits to be obtained from strengthening the application of competition law and policy principles in developing and least developed countries and countries in transition in terms of greater production, allocative and dynamic efficiency, welfare and growth. Moreover, since the benefits of competition have been estimated mainly for countries which already have relatively open economies and competition policies, it is likely that other countries might have relatively more to gain from adopting and enforcing competition policies; by the same token, however, they might have relatively more adjustment losses. The content and application of competition law and policy, and its relationship with industrial and trade policies, have varied among different countries at different times, as countries have sought with mixed success to promote the technological capacity and international competitiveness of their industries, compensate for the effects of market failures or ease structural adjustment. Infant industry policies have been successful in some instances, but there have also been many failures. In the long run, full competition has been essential for the competitiveness of firms and industries. There has now been widespread adoption of reforms promoting competition in developing countries and countries in transition. In recent years, there has been substantial convergence in the competition policies followed by different countries, although there remain substantial differences among them.

3. There are still many regulatory restrictions on competition in developing countries and countries in transition; moreover, private restraints have sometimes replaced, or may replace, governmental restraints. The issue now for these countries would be to determine the optimal path to follow in order to continue competition-promoting reforms. Appropriate policies to follow in this area might be worked out on a case-by-case basis in the light of the evolving circumstances of individual countries, taking into account the experiences of other countries and the market imperfections prevalent in developing countries and countries in transition, as well as their general business environment. But it would be useful to establish some clear parameters relating to the objectives of competition laws and policies (particularly the relative weights to be assigned to efficiency, consumer welfare and other objectives), and the decision-making procedures to be followed. Competition authorities could make a key contribution in the

formulation and implementation of economic policies by (a) expressing their views relating to policies or measures that restrict competition, and advising on how legitimate economic goals might be attained through less competition-restricting measures; and (b) combining effective enforcement against RBPs with an economically realistic approach to cooperation and concentration and a dynamic assessment of markets. In the context of developing countries, flexibility in applying competition law and policy may be particularly necessary in order not to impede efficiency, growth or development goals (as provided for in the Set of Principles and Rules), and coherence would need to be ensured between competition policy and other policies aimed at promoting development.

4. Difficulties have been experienced with the availability or collection of information for RBP control purposes in developing countries and countries in transition. Competition authorities would therefore need adequate powers and procedures relating to information collection and exchange, in collaboration as appropriate with other governmental authorities and (in cases with international aspects) with competition authorities overseas. Moreover, given the shortages of data relating to the effects of application of competition law and policy by competition authorities, it might also be useful to strengthen information exchange among competition authorities regarding experiences in this respect. This might promote convergence among competition policies and support national and international efforts to promote competition, efficiency and consumer welfare.

5. In the light of the above, possible action by States could include:

(a) Strengthened emphasis on the protection and promotion of competition as a key goal of economic policies of developing countries, least developed countries and countries in transition, while leaving room for its flexible application to take into account the specific characteristics of individual countries;

(b) Further efforts by competition authorities to gather data relating to the effects of RBP enforcement and competition advocacy;

(c) Consultations within UNCTAD on powers and procedures of competition authorities relating to collection and exchange of information relevant to RBP control;

(d) Continuing information exchanges within UNCTAD on:

- (i) Sources and procedures utilized by competition authorities to gather and organize information, on both an episodic and a systematic basis, including in dealing with cases having international aspects;
- (ii) In the light of the economic analysis applied in specific cases, the modalities of intervention utilized by competition authorities (RBP control and/or advocacy), the procedures followed, and any difficulties experienced;
- (iii) Effects of the intervention upon consumer welfare or firm, industry or national economic performance.

INTRODUCTION

6. The Third United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices requested the UNCTAD secretariat to prepare "a draft outline of a possible study on empirical evidence of the benefits (including benefits for consumers) to be gained by developing and least developed countries and countries in transition from applying competition law and policy principles to economic development in order to attain greater efficiency in international trade and development". 1/ A draft outline of the study 2/ was accordingly presented to the Expert Meeting on Competition Law and Policy (13-15 November 1996), which recommended that the UNCTAD secretariat be requested to prepare the study for consideration at the next meeting, on the basis of comments made at that meeting and the comments to be received by 31 January 1997. 3/ The agreed recommendations of the Expert Meeting were endorsed by the Commission on Investment, Technology and Related Financial Issues at its first session (18-22 November 1996 and 7 February 1997). 4/ The present study has been prepared in line with these requests.

7. For the purposes of this study, the term "competition" refers to the process of rivalry among firms and to market structures conducive to such rivalry (or potential rivalry), while the term "competition policy" refers to policy aimed at preserving and promoting competition, both by enforcing competition law against restrictive business practices (RBPs) by firms and by influencing the design or implementation of other governmental policies or measures affecting competition. The present study reviews empirical evidence of the benefits of competition for efficiency, welfare, international competitiveness and growth. No attempt is made to examine the effectiveness of competition policy in attaining other goals which are vested in it in some countries or regions, such as market integration, promoting market opportunities for small- and medium-sized enterprises (SMEs), ensuring freedom of economic action, the deconcentration of economic power or the promotion of a pluralistic economy and society.

8. Chapter I briefly describes the theory and provides empirical evidence for the benefits of competition in terms of static and dynamic efficiency and consumer welfare and some trade-offs which may arise. Much of the evidence reviewed relates to the effects of greater competition arising from deregulation and liberalization, since economic regulation is one main form of restraint on market entry. Chapter II reviews evidence relating to the broader effects of competition on welfare, growth and trade competitiveness, considering in this context some effects of direct governmental intervention and deregulation on welfare, economic growth and efficiency in international trade. Chapter III sets out evidence relating to the beneficial effects of RBP control and competition advocacy by competition authorities.

Chapter I

COMPETITION AND EFFICIENCY

A. Static efficiency

9. Competition allows markets to reward good performance and sanction poor performance by producers. It thus encourages entrepreneurial activity, market entry by new firms, and greater efficiency on the part of enterprises; this leads to greater productivity of capital and labour, reduces costs of production, and improves the competitiveness of enterprises (although some producers may lose out in the process of competition and may have to exit from the market). Competition also ensures that cost savings are passed on to consumers (competition leads to cheaper prices overall, although prices may sometimes increase in some markets as resources are reallocated to production in other markets); and consumers benefit as well from greater product quantity, quality and variety. For this purpose, consumers include business users of intermediate inputs, whose product quality and cost structure are improved by competition among their suppliers and Governments undertaking public procurement. In economic terms, the two main types of efficiency promoted by competition are "static efficiency" (optimum utilization of existing resources at least cost) and dynamic efficiency (optimal introduction of new products, more efficient production processes and superior organizational structures over time). Static efficiency may be subdivided into "production efficiency", i.e. technical and non-technical operating efficiencies, together with transaction cost and X-efficiency ^{5/} savings; and "allocative efficiency", i.e. the allocation of products through the price system in the optimum manner required to satisfy consumer demand (which will occur where the output of each product is at the level where the marginal cost of producing extra units equals their price). Misallocation of resources leads to a "deadweight loss" not recovered by either producers or consumers. Perfect competition may sometimes lead to inefficiency, and some market power is inevitably present in many situations; competition policies therefore aim at achieving as much "workable competition" as is realistic and seek ways in which market power can be made compatible with active competitive behaviour. But the difficulty in practice is to identify what is workable, i.e. how much competition is necessary for its beneficial effects to occur, whether actual or potential market entry or technological change would prevail over entry barriers and erode market power, and whether any countervailing efficiency gains are likely to arise.

10. Some of the effects of competition are not easily measurable, or there may be little available empirical evidence thereon, while some evidence may be inconclusive or ambiguous; or it may be difficult to isolate the effects of more competition from other savings arising from deregulation. Despite these difficulties, there is evidence relating to the beneficial effects of competition upon static efficiency, and some difficulties and trade-offs which may be involved in this respect. Limitations of the studies providing data relating to the effects of concentration are that they do not examine true "markets" in the competition policy sense (taking into account product substitutability), ^{6/} and often do not fully reflect competition from imports or the effects of collusion, of the way market structures change as firms compete, or of potential market entry; rather, they take concentration (usually "seller concentration" of the producers in a country) within

aggregate industry classifications (usually at the 3- or 4-digit level) during given periods of time as proxies for true market power. Yet, as discussed below, market concentration does not necessarily equate with lack of competition, particularly if barriers to entry are low; competition is a process which is not necessarily related to the number of competitors; and any efficiency gains obtained from concentration may be pro-competitive where they result in stronger competition. However, the data available are still useful in providing a broad picture. Little attempt is made below to discuss inefficiency arising from activities associated with market power (such as rent-seeking activity in order to obtain or maintain regulatory protection, or non-price competition through excessive advertising, product differentiation or service quality), since it is difficult to quantify losses incurred therein, and since non-price competition is often beneficial for consumer welfare.

11. In the Netherlands, it has been calculated that the average annual consumer loss arising from collusive practices or restrictive regulations in several service sectors amounts to 4,330-5,430 million guilders (around \$2.1-2.7 billion). ^{7/} Data relating to the United States show that a bid-rigging conspiracy for the sale of frozen seafood which was eventually prosecuted had an average mark-up over the competitive price over a one-year period of 23 per cent, ^{8/} and the breakdown of price-fixing conspiracies in some industries has led to steep declines in manufacturing costs. ^{9/} It is true that cartels may sometimes facilitate adjustment, but vigorous competition may sometimes be as or more effective in forcing rationalization of industries, particularly in larger markets. ^{10/} An examination of some exempted rationalization cartels in Germany (several different types of cartels are allowed under the German competition law, subject to certain conditions) found that they had promoted the viability of the producers in the industries concerned, but there was little evidence that they had contributed to productivity and efficiency improvements, while they had resulted in higher prices and less output. ^{11/}

12. The evidence relating to the relationship between concentration, on the one hand, and productivity, prices or profits, on the other, is mixed (regarding the latter, this may be because lack of competition leads to dissipation of profits in higher costs). A study of 670 British companies found that market power (estimated by high market shares) led to reduced levels of productivity, and that more competition (as measured by increased numbers of competitors or lower profit margins) was associated with higher rates of total factor productivity growth. ^{12/} A comparison of mark-up ratios for 36 manufacturing industries in 14 OECD countries found that the level of mark-ups for 1970-1992 was substantially lower in unconcentrated industries than in concentrated industries. ^{13/} In the case of the United States, there is little clear evidence of a relationship between market structure and prices, and insofar as there is, it is not clear to what extent this reflects superior competitive performance or better products by leading firms. But there is still unequivocal evidence relating to higher costs or charges of services such as electrical utilities or banks operating in concentrated markets; ^{14/} some mergers (particularly in highly concentrated markets) have raised prices substantially; and there is also some evidence that concentrated markets have fostered collusion. ^{15/}

13. Where market concentration decreases competition, it may sometimes still lead to greater efficiency by allowing economies of scale or scope in production, organization or other activities, the benefits of which may be passed on to the consumer to some extent. 16/ The extreme case of this is the natural monopoly, where the economies of scale and scope involved and the size of sunk costs make production by one firm the most efficient solution. However, the minimum economic scale of operations varies greatly among different industries and in line with the evolution of technology. The effects of seller concentration among domestic producers depend inter alia on the size of the market in relation to the minimum economic scale of plant, as well as on competition from imports. Studies of Canadian and Swedish industries have found that trade barriers lead to inefficiency or higher profits, but high seller concentration does not do so as long as import competition is vigorous and may have led to economies of scale. In the larger United States market, import competition has had a relatively stronger effect on efficiency in those industries that were more concentrated than they needed to be to achieve economies of scale. 17/ Much therefore depends on the degree of concentration; a study of industries in six developed countries confirms that an increase in seller concentration above a certain level tends to reduce technical efficiency. 18/ As regards mergers, the evidence is that the majority of them (particularly conglomerate mergers) decrease efficiency and profitability, while having insignificant positive effects, or negative effects, upon growth, but there is still a significant proportion of mergers which improve efficiency. 19/

14. The ratio between prices and marginal costs (mark-up ratio) is an important indicator of deviations from optimal resource allocation and consumer welfare. Furthermore, the persistence of relatively high profit levels in a product or geographical market, or of inter-firm differences in profits among firms in the same market, may indicate that competition in that market is hampered: perfect allocative efficiency would lead to equalization of profit levels throughout the economy in the long run, as capital flows from lower-return to higher-return uses. But mark-ups and the persistence of profits usually vary over the business cycle, may be higher in dynamic markets, and may be due to individual firms' continuous lead in efficiency; measurement of persistent profits is also difficult because of the inaccuracies of aggregation over different products and firms. However, a comparison of several developed countries still found that, for most countries, the more competition there was in their markets (mainly assessed from levels of concentration), the higher the convergence in long-run profits and speed of profit adjustment. 20/ The adjustment speed of prices to changes in costs and demand is another key measure of economic flexibility, the balance of the evidence relating to several OECD countries (with a few exceptions) being that adjustment speed is slower in industries with higher seller concentration; competition from imports has had a positive effect on adjustment speed in some countries and an insignificant effect in others. 21/ A survey of price-setting behaviour in 654 United Kingdom companies found that competition (as measured by numbers of competitors or market shares) increased the frequency of price reviews. 22/ The extent of price responses to a downturn in demand and thus in capacity utilization is another indicator; such "product market inertia" in response to downturns in the business cycle has been found to be greater in European and Japanese markets (for 1974-1992) than in the more competitive United States market. 23/ Furthermore, there is some evidence that cyclical pricing responses are more sluggish under oligopoly

than in more atomistic markets (although such aggregate analyses do not allow for relatively dynamic markets), while the tendency towards excess capacity has been found to be particularly strong in weak oligopolies and loose cartels. 24/

15. Industry structures in developing countries tend to be more concentrated than those in developed countries. 25/ A comparison of the interaction between the four-firm concentration ratio of 14 Malaysian manufacturing industries, their growth rates and nominal tariff rates for imports of the goods produced by these industries found that there was a lower average rate of nominal tariffs in highly concentrated sectors, yet import flows were relatively low in these sectors compared with less concentrated sectors. 26/ This may possibly be because large firms in these concentrated industries had exploited their dominant positions to raise entry barriers. Small firms operating in industries which were relatively more protected from imports had relatively low growth rates; this may have been due to extensive market entry into these sectors because of protection, which may have led to inefficiently small-scale production. An investigation of 1,492 establishments in 31 Malaysian industries found that price-cost-margins increased with seller concentration, advertising intensity, export opportunities, competition from imports and capital intensity. 27/ This latter study also reviews other studies of the relationships between structure, conduct and performance in several (mainly developing) countries. 28/ In general, they confirm that in these countries (as in Malaysia), price-cost margins, firm size, economies of scale, capital intensity and presence of foreign investors are positively correlated with concentration. However, it is not clear to what extent this is due to lack of competition or to the relative efficiency of large firms in these sectors, as well as to economies of scale in small markets.

B. Dynamic efficiency

16. Dynamic efficiency is probably the most important beneficial effect of competition. However, the possible trade-offs it may involve with competition are greater than in the case of static efficiency, and evaluation of them is also more difficult because dynamic efficiency is hard to measure or predict. Competition provides incentives to undertake research and development (R & D) and to introduce new production methods and products in order to stay ahead of competitors. Moreover, if there are many paths which technological advance can take, competition allows many of them to be tried and then selects the best, something a monopoly would find hard to replicate. In the unanimous opinion of business representatives at a recent hearing of the United States Federal Trade Commission, competition stimulates innovation; thus, it was accepted even by the Chairman of AT&T, the former telecommunications services monopolist in the United States, that the anti-trust decree requiring its divestiture of the assets used for its local telephone exchanges, linked with an order to the newly formed local companies to provide non-discriminatory interconnection rights to AT&T's long-distance rivals, not only encouraged extensive market entry, growth and price decreases, but also led to massive technological innovation. 29/ Data relating to the telecommunications industry in other OECD countries confirm that liberalization has led to technological innovation. 30/ It may also be noted that, in many circumstances, small firms are more innovative than large ones, particularly in making radical innovations in industries where technological progress is

rapid, and their research expenditure brings relatively more innovations per unit of expenditure incurred. Keeping markets open to new entrants with novel ideas is an important condition for technological progress. 31/

17. However, in some circumstances, competition may discourage innovation. Where profits are likely to be reinvested in innovation efforts, there may be a trade-off between static and dynamic efficiency, and between short-term and long-term consumer welfare. Profits over and above marginal costs may be needed both to finance ongoing R & D and as an incentive for further R & D (relatively high mark-ups have been found in some innovative industries). 32/ Market power bestowed by concentrated structures is often conducive to innovation (particularly when advances in the relevant knowledge base are occurring slowly), because of the greater resources and scale economies available to larger firms, and because too atomistic a market structure has a disincentive effect by not providing sufficient certainty of returns. 33/ R & D intensity tends to increase with firm size, and concentrated industries have a higher R & D/turnover ratio and propensity to patent. Although there is evidence that this ratio declines in some cases after concentration is higher than a certain threshold, 34/ there is no conclusive evidence indicating any causal link between increased concentration and decreased innovation. Large companies may carry their new technologies to a higher degree of perfection than small firms, and excel at cost-reducing R & D. However, inter-industry differences in technological opportunity explain much better R & D or innovation intensities than do differences in market structure. R & D collaboration and joint exploitation of research results often lead to substantial efficiency gains, but can also reduce inter-firm rivalry, deter new entry and have anti-competitive spillover effects on production and marketing and in downstream markets, with adverse consequences for the pace and direction of technological change. 35/ The technological outcomes of cooperative R & D arrangements initiated in Europe during the 1980s have proved disappointing so far. 36/

18. Because of the need to allow innovators the chance to recover their R & D investments, and minimize the risk that "free-riders" will appropriate the results of such R & D, intellectual property rights (IPRs) provide a degree of protection from competition for a given period (i.e. competition on the basis of price and quantity is deliberately restrained in order to encourage competition through innovation). 37/ While this may lead to a deadweight loss through higher prices, reduction in diffusion of the innovation and its fruits, and stifling of follow-on innovation (if protection is too broad), it should be set off against the growth and welfare benefits accruing from the introduction of new products and processes. Moreover, the exclusivity provided by IPRs does not necessarily amount to a monopoly, since there may be sufficient competition from substitute products or technologies.

Chapter II

COMPETITION AND GROWTH

A. Competition, deregulation and welfare

19. Barriers to competition within an economy, whether due to governmental or private restraints, lead to welfare losses. Thus, a survey of 46 countries found a significantly negative relationship between the level of per capita income and the size of average mark-up ratios in 1985. ^{38/} The proportion of deadweight loss to gross domestic product for the United States, calculated as a function of the relative price distortion (profit margin) and demand elasticity (variability of demand in relation to price changes) in different sectors, has been estimated at between 0.5 and 2 per cent. ^{39/} For the Netherlands, it has been estimated, on the basis of an applied general equilibrium model for a small open economy, that the real annual growth rate between 1984 and 1990 might have been about half a per cent higher, and export growth almost one per cent higher, if Dutch markets had been characterized by the same flexibility as in the United States; and the macroeconomic impact of tax reductions would also have been amplified. ^{40/}

20. Deregulation, privatization and the introduction of greater competition in a number of sectors in OECD countries has, in general, led to market entry, reductions in costs, prices and profits, improved service quality, and innovation. ^{41/} It has been estimated that deregulation in seven major United States service industries during the 1980s led to reduced production costs, improved productivity and innovation, market entry opportunities, downward pressures on prices, greater product variety and better quality of service, as well as an annual increase of \$32-42 billion in consumer welfare and \$3.2 in producers' profits, amounting to a 7-9 per cent improvement in that part of GNP affected by the reforms. ^{42/} A comparative review of European countries found that there was a positive correlation between relatively less regulation of product markets, productivity growth and overall economic growth. ^{43/} The implementation up to 1994 of the Single Market programme in the European Union (involving removal of barriers to trade within the EU) is estimated to have increased income by 1.1-1.5 per cent over the period 1987-1993, created 30,000-90,000 jobs and decreased inflation by 1-1.5 per cent (compared with what it would have been otherwise). Around half of this came from increases in competition and efficiency improvements, and there were reductions in the rate of increase in firms' profit margins as compared with the rate of increase during a previous period, price reductions in some sectors, and reductions in concentration at the national level, coupled with increases in concentration at the Union level in line with increases in pan-European activity. ^{44/} In Australia, it was estimated that the benefits to be expected from a package of competition-promoting and deregulatory reforms (including extension and revision of RBP control rules, systematic review of regulatory restrictions on competition, extension of prices oversight to public enterprises, and enhanced competition and efficiency in the provision of infrastructure) would, in the long run, lead to an annual gain in real GDP of 5.5 per cent, or \$23 billion; consumers would gain by almost \$9 billion; and there would be increases in real wages, employment, profits in most industries and governmental revenue. ^{45/}

21. It is likely that the above estimates understate the benefits of reform, as qualitative assessments in terms of better service quality or pressures to innovate are not taken into account, since not all sectors or areas where deregulation would be beneficial are included, and since the resources freed from enhanced competition in one sector would be reallocated for use in other sectors, thus improving the overall flexibility of the system and the capacity to innovate. Moreover, since these benefits have been estimated for countries which already have relatively open economies and competition policies in place, one may reasonably expect that countries without such policies might have relatively more to gain from deregulating and applying a competition policy. Thus, an evaluation of the effects of regulatory reform programmes on GDP in some major developed countries, taking into account increases in productivity and innovation, estimated that such effects would, reflecting the scope left for regulatory reforms in different countries, vary from less than 1 per cent (for the United States) to 6 per cent (for Japan). ^{46/} Some indications of the economy-wide gains for developing countries from deregulation are provided by data indicating that deregulation of entry into the long-distance telecommunications market in Chile led to 50 per cent cuts in rates, with large reductions in waiting times for telephone connections (as in other Latin American countries); the opening of port terminals to competition in Buenos Aires led to an 80 per cent reduction in fees; the opening of stevedoring operations to competition in Montevideo increased productivity by 300 per cent; and the welfare cost of selected regulations and other governmental interventions in the 1980s in Argentina is estimated to have been around \$4 billion a year (1990 dollars). ^{47/}

22. On the other hand, the findings of the studies discussed above often do not take into account all adjustment losses, which one may also reasonably suppose to be higher in countries with more regulated economies. Moreover, liberalization and the elimination of distortions within an economy do not automatically lead to growth in the absence of the supply capabilities to take advantage of new opportunities, and the prevalence of competition is only one factor determining countries' growth rates. Despite the fact, as indicated above, that the economies of Japan and Europe are relatively more regulated and protected than the economy of the United States, they grew faster for decades after the Second World War. Some implications of this are examined in the following section. Also, it should be noted that some of the above studies consider not only economic deregulation of measures directly restricting market entry or exit, pricing or output, which is of direct relevance to the present study, but also social regulation protecting the consumer, health, safety or the environment, and process regulation involving paperwork and administrative costs. In practice, however, it may sometimes be difficult to draw the line among these different types of regulation, and the issue of whether a social regulation places an undue restraint on competition has been a matter of controversy in the field of international trade.

B. Competition and industrial policy

23. Empirical evidence relating to the effects of industrial policy on competition and efficiency is mixed. Industrial policy measures implemented in different sectors by Japan, the Republic of Korea and Taiwan Province of China included control of market entry or capacity expansion; State-initiated or tolerated mergers, inter-firm cooperation, cartels, coordinated capacity scrapping and market-sharing arrangements; flexible trade protection for

infant industry development; channelling of investment into priority sectors and activities; and subsidies and incentives linked to the acquisition of technology and export performance. 48/ In the Republic of Korea, the Government promoted the development of large conglomerates as a means of achieving large economies of scale in mature heavy industries. However, such high concentration eventually led to losses in terms of efficiency, including through lack of flexibility, the stifling of the growth of supplier networks and over-concentration of innovation efforts. 49/ Many of these governmental interventions in some East Asian countries may have helped to compensate for the effects of market failures created or exacerbated in developing countries by shortages of entrepreneurship, capital or technology, or poor information flows and physical and institutional infrastructure. Such interventions were not aimed at "picking winners" at the frontier of international best technological practice, but rather at the mobilization of investment, the acquisition of mastery over readily available technologies and competitiveness in mature product markets. Some factors contributing to success were selectivity in protection and incentives (necessary to ensure efficient resource allocation between technologies involving substantial learning costs and simpler activities), conditionality related to technological mastery and export performance, the institutional and administrative capacity to implement such policies and maintain some insulation from rent-seeking pressures, and inter-firm rivalry. 50/ A key role in industrial success was played by strong competition among Japanese firms and among firms from Taiwan Province of China on domestic and international markets; the most successful Japanese industries have been those where domestic rivalry was strong (which was stimulated by high growth rates and market entry). 51/ Although price competition among large conglomerates from the Republic of Korea was generally limited to international markets, firms competed vigorously to win temporary monopolistic positions or subsidies. And firms from all three areas naturally had to face strong competition from foreign firms on international markets. This interaction of government policy and inter-firm rivalry stimulated the growth of technological capabilities and exports. But there have been several failures in governmental intervention in Japan and the Republic of Korea. 52/ There has been extensive phased deregulation and stronger competition law enforcement in these countries and in Taiwan Province of China. A comparison of prices and profitability in the regulated and protected cattle-feed industry with those in the electronics industry (for which trade protection had been liberalized) in the Republic of Korea showed that the former's profitability and divergence from international prices were much higher than the latter's, even though the electronics industry was highly concentrated. 53/ Trade protection and business licensing controls have also been successfully used by developing countries such as Brazil and India to build up some industries, 54/ but there have been numerous policy failures as well, and infant industry protection has often led to the creation of permanent infants.

25. In developing countries, it is likely that import competition can boost the structural efficiency of industry by giving domestic firms greater access to inputs unavailable or more costly in domestic markets (although gains from these may, at least in the short term, be offset by income losses from the shrinking of domestic industry). Also, available data would indicate that exposure to foreign competition has tended to impose pricing discipline and improve technical efficiency; however, there has been no consistent correlation between trade liberalization and productivity

increases. 55/ Thus, in Chile, extensive and sudden import liberalization between 1967 and 1979 led to a decrease in the mean price-cost margin from 48 to 32 per cent and an increase in the four-firm concentration ratio from 49 to 61.5 per cent as many domestic producers went bankrupt, merged or switched product lines. 56/ But there were no changes in sectoral productivity levels, and market entry rates fell. 57/ In many cases, price decreases were not substantial because competition among foreign suppliers was based on product differentiation rather than on price, and because many local firms merged or controlled distribution channels. National production began to be exposed to wide fluctuations in international prices for some products and to dumping. More pragmatic and selective policies adopted in the mid-1980s (including increased trade protection followed by liberalization in 1991) proved more fruitful. The eventual application of strict prohibitions on vertical restraints resulted in a flexible and independent distribution sector, which contributed to the success of trade liberalization. 58/ In Colombia for the period 1977-1985, gradual trade liberalization led to higher and steadier growth than in Chile, a lowering of price-cost margins and increased efficiency, with efficiency growth being largest in highly concentrated industries. 59/ But in many product areas such as fertilizers, pharmaceuticals and plate glass, domestic and international price differentials persisted because of manufacturing and marketing linkages between domestic and foreign firms. On the other hand, a leading United States biscuit manufacturer allegedly found it difficult to enter the market because of exclusive distribution clauses between a dominant domestic manufacturer and major retailers, and had to enter into licensing and joint marketing arrangements with the dominant firm. 60/

26. In the long run, full confrontation with competition has been essential to ensuring the continuing development of industries. A study of the evolution of over 100 industries in 10 countries, including Japan and the Republic of Korea, found that at all stages of development there was a strong correlation between vigorous rivalry within industries, and the creation and persistence of competitive advantage in domestic and export markets; creating a dominant "national champion" had rarely resulted in international competitive advantage, as firms that did not have to compete at home rarely succeeded abroad. 61/ This was the case even in industries with substantial economies of scale based in countries with small domestic markets, as this pressured local firms to expand on world markets. Competition among domestic firms was often found to have a relatively more beneficial effect than foreign competition, because of rivalry with known competitors, and because of the need to innovate to do better than other firms working under similar conditions; however, an open home market together with global strategies could partially substitute for the lack of domestic rivals in a smaller country. The key role that competition can play in increasing efficiency and consumer welfare, and thus in supporting development efforts, has been better appreciated by developing countries and countries in transition in recent years. This shift in perception has contributed to widespread deregulation, price liberalization, demonopolization, privatization, removal of subsidies, liberalization of trade and foreign direct investment policies, and, in many cases, the adoption or reform of competition laws and policies.

27. Governments in advanced countries have also directly or indirectly intervened to protect and promote high-technology industries, and this may actually have benefited competition in certain cases. It has been suggested,

for example, that (direct or indirect) government subsidies in the United States and Europe have increased competition and accelerated innovation in the commercial aircraft industry, avoiding the natural monopoly outcome which would have occurred if market forces alone had prevailed. ^{62/} In general, however, Government intervention in advanced countries has met with more failures than successes; it has been suggested, for example, that the failure of European efforts to promote electronics or telecommunications industries illustrates the high risk of failure of industrial policies when they underestimate the value of competition and give too much market power to a few sheltered domestic producers. ^{63/} Also, it may have become increasingly inefficient for these Governments to intervene directly as industries became more complex and knowledge-intensive and the path of future technological development more uncertain, and the flexibility brought about by competition and decentralization of investment decisions would then have secured a decisive advantage in discovering where resources would best be allocated. ^{64/} The industrial policies now followed by the European Union are less interventionist, and competition policy is considered to be complementary to industrial policy. A permissive approach has been adopted to joint ventures permitting the development of high technology or the transfer of new technology to the EU from non-EU firms. ^{65/} Conversely, in dealing with declining industries, the European Commission aims to enable structural overcapacity to be eliminated, but any agreements relating to structural adjustment must not include provisions fixing prices or quotas and must contain provisions for plant closures and prohibition of new capacity. ^{66/} In the United States, competition law and policy have also varied significantly over the last two decades, including through liberalization of the treatment of R & D joint ventures and even production joint ventures. Thus, a production joint venture between the world's two largest car manufacturers was allowed to go ahead by the Federal Trade Commission because of the transfer of improved manufacturing and management techniques to the American partner, although limits were placed on its output and duration and on the exchange of confidential business information in order to prevent anti-competitive "spillovers"; the venture was eventually terminated with the consent of the parties. ^{67/} In recent years, there has been convergence in the competition policies followed by the European Union and the United States, as well as by other countries or regions, but there are still substantial differences in this area.

Chapter III

THE BENEFITS OF APPLYING COMPETITION LAW AND POLICY

A. The effects of RBP control and the need for information

28. It is likely that RBP control has substantial beneficial effects on competition, in terms not only of direct effects in cases dealt with, but also of the general deterrent effect on engaging in RBPs; this would oblige firms to compete harder, and thus create a competition climate and business culture. However, there is a paucity of ex post facto studies quantifying the effects of enforcement. Surveys in the United States have found that price cuts tend to occur at the outset of an investigation, before the actual bringing of a case. Even where firms investigated for price-fixing are not charged, there may be price reductions, and trend-adjusted prices may remain lower than their pre-investigation levels for a considerable time after the termination of a price-fixing case. Thus, a survey of 23 industries which were investigated for price-fixing, but in respect of which no court action was eventually initiated, found that 14 of them experienced price reductions, with an average reduction for all 23 of 1.4 per cent. 68/ An investigation of five price-fixing cases found that for two of them, the start of investigation led to price reduction of 2 and 5 per cent respectively. With regard to three of these cases, real prices at the end of the litigation were 6.6-11.4 per cent lower than would have been predicted in the absence of anti-trust action. Five years after the termination of these cases, a deterrent effect of 3.4-8.9 per cent remained, but the deterrent effect of the one case involving no criminal sanctions had eroded over time. 69/

29. Similar responses to competition cases were found in a time-series study of price indexes for 10 products from the mid-1950s to the mid-1980s involved in cases where the European Commission and/or the German Federal Cartel Office (FCO) had found that RBPs had occurred (the cases involved German firms and/or affected the German market); in a study of 1979 data for 106 German industries; and in an analysis of changes in profit margins over time for 17 German companies involved in cartel cases. 70/ A case brought by the FCO would lead to price decreases of 3.7-5.2 per cent in the year of the decision, but this effect would be totally eroded by the following year; however, particularly in concentrated markets, there would be a decrease in profit margins (an average of 28.4 per cent in 13 out of 17 cases). A case brought by the European Commission would lower German prices by 2.6-4 per cent in the year of the decision, but less than 10 per cent of the initial impact would remain after five years. The average overall effect of the introduction and enforcement of European and German competition law on German industry amounted to less than 1 per cent of manufacturing prices, and no long-lasting deterrent effect was found. There was evidence, however, of a "regime effect" occurring in Germany after the introduction of the competition law in 1957, i.e. a general price decline in West German industry due to changes in the competitive environment. This suggested that further changes in the law or penalties would affect competitive behaviour.

30. A 1985 survey of Brussels-based lawyers specializing in competition cases found that most thought the European Commission failed to detect most price-fixing engaged in by firms, but the probability of an investigation and the amount of fines imposed by the Commission had increased over the

previous 10 years, and were regarded as having a considerable deterrent value. 71/ Some deterrent value was also attached to the administrative costs and media attention associated with undergoing investigation and litigation. Among enforcement changes that were being considered by the Commission at that time (and were subsequently adopted), the lawyers considered that an increase in fines, an increase in the number of enforcement personnel, and the issuance of more guidelines would be helpful in promoting corporate compliance with the law. But the two changes expected by the lawyers to be the most effective were the encouragement of private damage suits and the imposition of penalties on the individuals involved (and not just their firms). In the case of the United Kingdom, research into the effects of investigation by the Monopolies and Mergers Commission (MMC) between 1959 and 1973 of 28 product markets under the complex monopoly provisions of the United Kingdom's competition law (analogous to market domination) found that results were relatively modest. After being investigated, the initial dominant firm or oligopoly maintained or improved its position in around a third of these markets; in a quarter of them, the market leader's sample declined by at least five percentage points, but the loss was wholly or partly compensated by the increased market shares of existing oligopolists; and in the remaining 12 markets, new entrants gained substantial market shares, but market structure remained oligopolistic. 72/ Moreover, there was no significant difference with the rates of market share decline of leading firms in a control group; on the other hand, the fact that leading firms in those markets which the MMC had found to lack competition were no more successful in preserving their dominant positions than leading firms in other markets would indicate that the MMC's intervention may have successfully facilitated competition. It may be noted that competition law in the United Kingdom is now going to be reformed. In Mexico, although the competition law has been in force since 1993, the activism of the competition authority has already had a great impact on the general attitude and approach to doing business in Mexico. It has been suggested, however, that there are large loopholes and missing rules in the competition law relating to exemptions in respect of "relative monopolistic practices" (subject to case-by-case evaluations rather than absolute prohibitions), and particularly relating to due process and clarity in investigation proceedings. 73/ The above evidence would suggest that continuing efforts need to be made to enhance both the effectiveness and the "user-friendliness" of enforcement.

31. In some countries, competition authorities have taken steps to ensure that the benefits of deregulation for competition are not reduced by exclusionary tactics by incumbent firms. Thus, the benefits of deregulation in some sectors in OECD countries (such as public utilities, airlines and long-distance coaches) have been reduced because incumbents have cross-subsidized from non-competitive sectors or exploited vertical linkages; controlled airport time slots, computer reservations systems or bus stations; benefited from established reputations, brand names, size or financial strength; or subsequently merged. 74/ In the United Kingdom, for instance, despite privatization and deregulation in the express coach market, one of the two original public sector companies was able to retain its dominant position because of such advantages; but action was eventually taken to break it up into regional companies. However, in other countries, no action has been taken by the authorities to safeguard benefits arising from deregulation. In the Philippines, for instance, deregulation of the domestic shipping industry led within three years to the entry of new operators, improvements in capacity, service frequency and service standards, and the introduction of new

shipping technology. 75/ But a merger of three large shipping companies, which led to the creation of a firm with 50 per cent of the local market for seagoing freight and 65-75 per cent of the market for seagoing passengers, was cleared by the Securities and Exchange Commission without any examination of possible dangers to competition. In the United States, the Justice Department opposed some mergers in the airline industry following deregulation; however, these mergers were approved by the Department of Transport, after which prices increased and service quality deteriorated on some routes. 76/

32. In some instances, enforcement action by a competition authority has had beneficial effects in other countries and on international trade. Cases brought by the European Commission against cartels or abuses of dominance in the shipping sector have led to reduced freight charges and better service on the trans-Atlantic and Europe-Asia shipping routes. 77/ However, the beneficial effects have not been so strong on the Europe-West Africa route. Despite greater concentration, there has been a substantial reduction in charges on the maritime segment of the route (by almost half for Côte d'Ivoire and Senegal), although not to the level of charges on the other routes, because of economies of scale. The liberalization by those two countries of their regulatory entry barriers also contributed to these price reductions, and smaller reductions were achieved by other West African countries which did not liberalize. But poor equipment in ports, poor land communications with the hinterland and monopolies over cargo handling have led to variable quality of service and have not substantially decreased the overall cost of transport between Africa and Europe. This would suggest that competition policy measures by West African countries would further improve the situation, but that competition policy cannot solve all development problems.

33. A key factor contributing to the effectiveness of competition laws and policies has been the possession of enough information by competition authorities. Conversely, lack of reliable or disaggregated economic or product data, together with lack of information about production costs, profits, market shares and consumer behaviour, has been a problem particularly in developing countries and countries in transition, and has affected the quality of decisions taken or their acceptability to the courts. 78/ It has been suggested that there is a need for systematic monitoring of industrial conditions and the structure, conduct and performance of particular industries by competition authorities, in collaboration with other governmental authorities and with competition authorities overseas. 79/ The extent to which this is feasible might be explored, taking into account resource requirements, the fact that competition authorities operate on an episodic basis to deal with specific competition problems arising in individual markets where appropriate, and the need to maintain confidentiality of sensitive business information. Lack of information has been a problem particularly in relation to evidence-gathering where collusion is suspected, 80/ and for this purpose, adequate investigatory powers for the competition authority have proved essential, problems with the inadequate powers of the competition authority to collect data legally required before a case can be filed having been experienced in India, for example.

34. Problems of information-gathering relating to RBPs originating overseas have been experienced by some countries. For example, a case brought by the United States Justice Department against an American company, a Swiss affiliate of a South African company and two foreign nationals, alleging a

conspiracy to raise the price of industrial diamonds in the United States market, was dismissed because much of the evidence was overseas. On the other hand, in two other cases in the United States, where international cartels for lysine (an animal feed) and citric acid were successfully prosecuted, the Justice Department discovered evidence of price-fixing and market allocation relevant to other countries, but because of legal constraints, it could not share it with countries which were not parties to anti-trust cooperation agreements with the United States. ^{81/} It may be noted that there is some evidence that international cartels affect or have affected developing country markets in such sectors as heavy electrical equipment, aluminium, flat rolled steel products, shipping, electrolytic tinplate and cement. There have also been tying restraints linking the supply of semiconductor chips to the purchase of microprocessors. ^{82/} In a world of globalization and liberalization, the incidence and scope of RBPs having effects in more than one country should continue to increase, strengthening the need for international cooperation in this area.

C. Competition advocacy

35. A key function of competition authorities in many countries has been advocacy of the application of competition principles in the design or implementation of governmental policies and measures, including the elimination of unnecessary regulation and the adoption of the least anti-competitive means of achieving various policy objectives. For this purpose, several competition laws give competition authorities the right to intervene in legislative or administrative processes, while others may intervene only if requested. In Canada and the United States, for example, competition authorities participate in proceedings before regulatory agencies relating to competition policy, and also undertake general advocacy efforts within the Government. In the United States, the Justice Department also participates in executive branch deliberations, and has played an important role in deregulation. In Hungary, the competition authority may take part in the deliberations of the legislature and give advice on competition issues, as well as presenting annual reports to the legislature; also, it has consultative rights with the executive when issues within its sphere of responsibility are discussed. In the Republic of Korea, the competition law requires other governmental authorities to consult with the competition authority when they wish to introduce, amend or enact any legislation that might restrain competition. Active competition advocacy efforts have been undertaken by the Fair Trade Commission with respect to both proposed and existing legislation, including advocacy of the elimination of entry barriers and the introduction of foreign competition in oligopolistic markets. ^{83/} Under the Côte d'Ivoire competition law, the executive may request opinions from the Competition Commission on questions relating to competition, and must make such a request where draft legislation would limit competition; the authority may itself take the initiative. In 1996, for example, a request for an opinion on draft legislation liberalizing petrol prices was made, and the competition authority gave a favourable opinion. In many cases, however, the authority is not consulted when it should be, or the appropriate procedures are not followed. ^{84/}

36. One important area in which competition authorities sometimes have a role to play is the area of trade policies and measures. In many OECD countries, competition authorities are consulted in the formulation of trade

policies; in Canada and the United States, they may also be consulted regarding the implementation of trade policies and the enforcement of trade laws. 85/ In practice, however, it is often difficult for competition authorities to achieve results in this area. It is alleged, for example, that the United States Federal Trade Commission's public comments on the economic harm caused by anti-dumping measures implemented by the International Trade Commission have frequently been ignored. 86/ The OECD Council has recommended that policy makers should, when considering a prospective trade measure or reviewing existing measures, undertake as systematic and comprehensive an evaluation as possible of the likely effects of the measure or measures, including the impact of the measure or measures on the structure and functioning of the relevant markets and the long-term effects on the structural adaptation of the affected sector; and to provide a framework for such an analysis, it has prepared a checklist of the important effects of trade measures. 87/ It has been suggested that competition policy authorities can make an important contribution to such analyses, particularly with respect to the evaluation of the likely impact of the measure or measures on the structure and functioning of the relevant markets. 88/ There is little information, however, as to how such recommendations have actually been implemented.

37. In the Russian Federation, the Antimonopoly Committee has successfully argued for the suspension of proposed trade safeguard measures against imports of textiles and cash registers from the European Union. Its investigations discovered that, in some cases, domestic producers intended to obtain tariff protection without attempting to increase their ability to compete on world markets, while in other cases it proved that the main reason for deterioration in their performance was conditions on the domestic market. 89/ The Committee also cooperated with the Ministry of Economy in determining the conditions for access of foreign investors to the Russian market, and successfully argued for the exclusion of a number of provisions which would have constituted unreasonable access barriers. In Poland, a proposed measure to impose tariffs on imported food was abandoned because of adverse reactions by the Antimonopoly Office. 90/ But one key obstacle to greater success in advocacy in the trade area has been trade restrictions in other countries. The Polish Antimonopoly Office had requested a comprehensive evaluation of the consequences of abandoning liberal trade policy and an explanation of the reasons for the adoption of protectionist measures; it argued that, if adopted, such measures should have a limited scope and duration of protection and an annual rate of reduction specified in advance. 91/ However, because of the asymmetry of response by its trading partners to its earlier extensive trade liberalization, Poland introduced a higher tariff structure; and this invariably led to price increases in markets where there was dominance. 92/

Notes

1/ See para. 8 of the resolution adopted by the Conference, contained in the Report of the Third United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices (TD/RBP/CONF.4/15), annex I.

2/ See section III of the UNCTAD report "Work programme, including technical assistance, advisory and training programmes on competition law and policy" (TD/B/COM.2/EM/3).

3/ In para. 2 (c) of its agreed recommendations (see UNCTAD document TD/B/COM.2/EM/5, annex I). Comments were received from the Government of the Netherlands, which also sent some reference material.

4/ See para. 8 (a) of the agreed conclusions adopted by the Commission, contained in Annex I of the "Report of the Commission on Investment, Technology and Related Financial Issues on its first session" (TD/B/44/4, TD/B/COM.2/4).

5/ The extent to which a firm's overall costs approach their theoretical minimum level, given its level of output and resources. Conversely, X-inefficiency reflects the excess of actual over minimum possible costs of a firm at a given level of output.

6/ For competition policy purposes, relevant product and geographical markets are identified by assessing either or both interchangeability of use (reasonable possibilities for consumers to switch to other producers or substitute products, and for other producers to supply the same or substitute products) and the cross-elasticity of demand (customers' willingness to switch to substitute products as a result of a hypothetical price increase).

7/ See N. van Hulst, De baten van het marktwerkingsbeleid (mimeo), covering real-estate brokerage, notaries, pharmacists, energy suppliers, shops (opening hours), credit institutions for small firms, bus transport and public procurement without tendering; and Hendrik P. van Dalen, Efficiency and collusion in Dutch real-estate brokerage, Ministerie van Economische Zaken, The Hague, June 1995.

8/ See Luke M. Froeb et al., What is the effect of bid-rigging on prices?, United States Justice Department, EAG Discussion Paper 93-2, 28 January 1993.

9/ See the data and studies cited in F.M. Scherer and David Ross, Industrial market structure and economic performance, 3rd ed., Houghton Mifflin Company, Boston, 1990, pp. 668-669.

10/ Ibid., pp. 335-336.

11/ See David B. Audretsch, "Legalized cartels in West Germany", Antitrust Bulletin (1989), vol. XXXIV, p. 579.

12/ See S. Nickell, "Competition and corporate performance", Journal of Political Economy (1996), vol. 104, no. 4.

13/ See Joaquim Oliveira Martins et al., Mark-up ratios in manufacturing industries: Estimates for 14 OECD countries, OECD Economics Department Working Paper No. 162 (OCDE/GD(96)61), Paris, 1996.

14/ See Scherer and Ross, op. cit., pp. 411-447 and pp. 668-669.

15/ See Gregory J. Werden, A review of the empirical and experimental evidence on the relationship between market structure and performance, United States Department of Justice, EAG Discussion Paper 91-3.

16/ Strictly speaking, it is minimum economic scale of plant and operations in general which leads to efficiency gains, rather than market concentration or large firm size. However, these would tend to be related.

17/ See J.M. Macdonald, "Does import competition force efficient production?", Review of Economics and Statistics (1994), vol. 76, pp. 721-727, and Scherer and Ross, op. cit., pp. 438-439 and 670-672.

18/ See Richard E. Caves et al., Industrial efficiency in six nations, Cambridge, Mass., MIT Press, 1992.

19/ See UNCTAD, Concentration of market power, through mergers, take-overs, joint ventures and other acquisitions of control, and its effects on international markets, in particular the markets of developing countries (TD/B/RBP/80/Rev.2).

20/ See Peter A.G. van Bergeijk and Robert C.G. Haffner, Privatization, deregulation and the macroeconomy: Measurement, modelling and policy, Edward Elgar, Cheltenham, UK, 1996.

21/ Ibid.

22/ See Simon Hall et al., "How do UK companies set prices?", Bank of England Quarterly Bulletin, May 1996, pp. 180-192.

23/ See Bergeijk and Haffner, op. cit.

24/ See Scherer and Ross, op. cit, pp. 673-675.

25/ See Clive S. Gray, "Competition policy in developing countries pursuing structural adjustment", Antitrust Bulletin (1993), vol. XXXVIII, pp. 425-467.

26/ See Giovanni Nicola De Vito, Market distortions and competition: The particular case of Malaysia, UNCTAD Discussion Paper No. 105, October 1995.

27/ See Rugayah Mohamed, "Market structure, conduct and performance of Malaysia's manufacturing sector", Asian Economies, vol. 25, no. 3, September 1996, pp. 24-42.

28/ Including Brazil, Greece, Kenya, Malaysia, Mexico, Philippines, Republic of Korea and Taiwan Province of China. Similar data available for Chile, Colombia and Côte d'Ivoire; see Gray, op. cit.

29/ See United States Federal Trade Commission, "Anticipating the 21st century: Competition policy in the new high-tech global marketplace", vol. I, Antitrust and Trade Regulation Report, Special Supplement, 6 June 1996.

30/ See OECD, Regulatory reform, privatisation and competition policy, Paris, 1992.

31/ See J. Bound et al., "Who does research and development and who patents?", in Zvi Griliches (ed.), Research and development, patents and productivity, National Bureau of Economic Research Conference Report, Chicago, 1984. See also Zoltan J. Acs and David B. Audretsch, The determinants of innovation in large and small firms, Discussion Paper IIM/IP 86-1, and Accounting for the differences between large- and small-firm innovation, IIM/IP 86-19, Wissenschaftszentrum für Sozialforschung, Berlin, 1986.

32/ See Martins et al., op. cit.

33/ See Scherer and Ross, op. cit., pp. 653-660.

34/ See R. Levin et al., "R & D, appropriability, and market structure: New evidence in some Schumpeterian hypotheses", American Economic Review (1985), vol. 75.

35/ See J. Groenwegen and P.R. Beije, "The European answer to the dilemmas of competition, cooperation and mergers", Journal of Economic Issues (1992), vol. XXVI, pp. 493-511.

36/ See F.M. Scherer, "Schumpeter and plausible capitalism", Journal of Economic Literature (1992), vol. XXX, pp. 1,416-1,433.

37/ These remarks apply mutatis mutandis to IPRs ensuring product identification such as trade marks, which involve an investment in building up product recognition and goodwill.

38/ See J. Gali, "Monopolistic competition, endogenous mark-ups, and growth" European Economic Review (1994), vol. 38, pp. 748-756.

39/ See Scherer and Ross, op. cit., pp. 663-667.

40/ See P.A.C. van Bergeijk et al., "Measuring the speed of the invisible hand: The macroeconomic costs of price rigidity", Kyklos (1993), vol. 46, pp. 529-544.

41/ See OECD, Regulatory reform ..., and Dirk Pilat, Competition, productivity and efficiency, OECD Economic Studies, No. 27, 1996/II, and Competition, wages and productivity, OECD document ECO/CPE/WP1(96)1.

42/ See Clifford Winston, "Economic deregulation: Days of reckoning for microeconomists", Journal of Economic Literature (1993), vol. XXXI, pp. 1,263-1,289. The industries were airlines, railroads, trucking, telecommunications, cable television, brokerage and natural gas. A counterfactual comparison was undertaken of the effects on welfare of deregulation and of what would have happened if regulation had continued.

43/ See Kees Koedijk and Jeroen Kremers, "Market opening, regulation and growth in Europe", Economic Policy, vol. 23, pp. 443-468.

44/ See Commission of the European Communities, The impact and effectiveness of the single market, COM(96) 520 Final, Brussels, 30 October 1996.

45/ See Industry Commission to the Council of Australian Governments, The growth and revenue implications of Hilmer and related reforms, March 1995.

46/ See Sveinbjörn Blöndal and Dirk Pilat, "The economic effects of regulatory reforms", OECD Economic Studies, 1997. The industries considered were electricity, telecommunications, road transport, airlines and distribution.

47/ See J. Luis Guasch and Robert W. Hahn, The costs and benefits of regulation: Implications for developing countries, Policy Research Working Paper 1773, World Bank, June 1997. The estimates relating to Argentina cover different types of regulations, not just economic regulations. The measure of costs varies from efficiency losses, to additional costs to consumers, tax reductions and subsidies; thus, it is not technically correct to total them.

48/ See UNCTAD, Trade and Development Report 1994, United Nations publication, (Sales No. E.94.II.D.26).

49/ See UNCTAD, Corporate policies in the Republic of Korea (UNCTAD/ITP/65), Report by Kyu Uck Lee. See also Sea Jin Chang and Unghwan Choi, "Strategy, structure and performance of Korean business groups: A transaction cost approach", Journal of Industrial Economics (1988), vol. XXXVII, pp. 141-158.

50/ See Sanjaya Lall, "Industrial policy: The role of Government in promoting industrial and technological development", UNCTAD Review 1994 (UNCTAD/SGO/8).

51/ See Alice H. Amsden and Ajit Singh, "The optimal degree of competition and dynamic efficiency in Japan and Korea", European Economic Review (1994), vol. 38, pp. 941-951.

52/ See Michael Porter, The competitive advantage of nations, Macmillan, London, 1990, and Sung-Taik Han, "Competition policy and economic development in Korea", in OECD, Competition and economic development, Paris, 1991, pp. 223-245.

53/ See Sung-Taik Han, op. cit.

54/ See UNCTAD, International monetary and financial issues for the 1990s, vol. 1 (UNCTAD/GID/G24/1).

55/ See Gray, op. cit.

56/ See T. Condon and J. de Melo, Industrial organization implications of OR trade regimes: Evidence and welfare costs, Working Paper No. 487, World Bank, August 1990. See also James Tybout et al., "The effect of trade reforms on scale and technical efficiency: New evidence from Chile", Journal of International Economics (1991), vol. 31, pp. 231-250.

57/ See UNCTAD, Trade liberalization in Chile: Experiences and prospects (United Nations publication, Sales No. E.91.II.D.18), 1992.

58/ See Roger Allan Boner, "Competition policy and institutions in reforming economies", in Claudio R. Frischtak (ed.), Regulatory policies and reform: A comparative perspective, World Bank, December 1995, pp. 38-68.

59/ Ibid. See also Gray, op. cit.

60/ See Shyam Khemani, "Interface between competition and trade policies", International Business Lawyer (1995), vol. 23, p. 481.

61/ See Porter, op. cit.

62/ See Laura D'Andrea Tyson, Who's bashing whom? Trade conflict in high-technology industries, Institute for International Economics, Washington, D.C., 1992.

63/ Ibid.

64/ See Edward Graham, Competition policies in the dynamic industrializing economies: The case of China, Korea and Chinese Taipei (mimeo), OECD Development Centre, 1997.

65/ See, for example, the Olivetti/Canon case, O.J. (L52) 51 (1988).

66/ See European Commission, XII Report on Competition Policy, 1983, and XXI Report on Competition Policy, 1991. See also the Synthetic Fibres case, 1984 O.J., L. 207/17 (1985); 1 C.M.L.R. 787.

67/ See General Motors Corp., 103 F.T.C. 374 (1984), and General Motors Corp., C-3132, 5 Trade Reg. Rep. (CCH) 23491 (FTC 29 October 1993).

68/ See Robert M. Feinberg, "Strategic and deterrent pricing responses to anti-trust investigations", International Journal of Industrial Organization (1984), vol. 2, pp. 75-84.

69/ Ibid.

70/ See Robert M. Feinberg, "The effects of European competition policy on pricing and profit margins", Kyklos (1986), vol. 39, p. 267.

71/ See Robert M. Feinberg, "The enforcement and effects of European competition policy: Results of a survey of legal opinion", Journal of Common Market Studies (1985), vol. XXIII, p. 373.

72/ See R.W. Shaw and P. Simpson, "The persistence of monopoly: An investigation of the effectiveness of the United Kingdom Monopolies Commission", Journal of Industrial Economics (1986), vol. XXXIV, p. 355.

73/ See Juan Francisco Torres Landa R., "Recent developments in anti-trust legislation in Mexico" The Comparative Law Yearbook of International Business, vol. 18, 1996, p. 49.

74/ See Martin Howe, "Competition policy and deregulation" in OECD, Competition and economic development.

75/ See Emanuel A. Cruz, Merger in the interisland shipping industry: Philippine experience (mimeo), International Training Programme on Competition Policy, 4-8 August 1997, Korea Development Institute and Korea Fair Trade Commission, Seoul.

76/ See Charles F. Rule, Merger enforcement policy: Protecting the consumer - Remarks before the American Bar Association (mimeo), 9 October 1987; and Severin Borenstein, "The evolution of U.S. airline competition", Journal of Economic Perspectives (1992), vol. 6, pp. 45-74.

77/ See Yves Kenfack, La politique de la concurrence dans les transports maritimes internationaux: Enjeux pour les pays en développement, UNCTAD consultant report (forthcoming).

78/ See H.K. Paranjape, Control in India of restrictive business practices, UNCTAD (UNCTAD/ST/MD/20). See also Janusz A. Ordover, "Competition policy for natural monopolies in a developing market economy", Economics of Transition (1994), vol. 2, pp. 317-342.

79/ See Robert D. Anderson and S. Dev Khosla, Competition policy as a dimension of economic policy: A comparative perspective, Occasional Paper No. 7, Industry Canada, May 1995.

80/ As in Latin America; see Malcolm D. Rowat, "Competition policy in Latin America: Legal and institutional issues", in Julio Faundez (ed.), Law and politics, Macmillan, London, 1997.

81/ See "A note of caution with respect to a WTO agenda on competition policy", address by Joel L. Klein, Acting Assistant Attorney-General, United States Department of Justice, to the Royal Institute of International Affairs, Chatham House, London, 18 November 1996.

82/ See UNCTAD, Restrictive business practices that have an effect in more than one country, in particular developing and other countries, with overall conclusions regarding the issues raised by these cases (TD/RBP/CONF.4/6); and Frédéric Jenny, The interface between competition policy and trade, investment and economic development (mimeo), paper presented at the International Training Programme on Competition Policy, Seoul, 4-8 August 1997.

83/ See Fair Trade Commission, Monopoly regulation and fair trade in Korea, Seoul, 1991.

84/ See Commission de la Concurrence, Rapport d'activité - Année 1996.

85/ See OECD, Competition and trade policies: Their interaction, Paris, 1984.

86/ See Boner, op. cit.

87/ Recommendation of the Council for cooperation between Member countries in areas of potential conflict between competition and trade policies (C(86)65(Final)), 23 October 1986.

88/ See OECD, Competition and international trade: OECD instruments for cooperation, Paris, 1987.

89/ See Leonid Bochyn, Competition policy in the Russian Federation as a factor of integration into the world economy, (mimeo), Seminar on Competition Policies for an Integrated World Economy, Oslo, 1995.

90/ See Craig W. Conrath and Barry T. Freeman, "A response to 'The effectiveness of proposed anti-trust programmes for developing countries'", North Carolina Journal of International Law and Commercial Regulation (1996), vol. 19, p. 233.

91/ See Annual Report on Activity of the Antimonopoly Office 1992, Warsaw, 1993.

92/ See Antimonopoly Office, Competition law and policy in Poland (1990-1993), Warsaw, 1994.

